(9)

No. 84-16

In the Supreme Court

OF THE

United States

KENNETH CORY, LEO T. MCCARTHY, and
JESSE R. HUFF, members of the
California State Lands Commission,
Appellants,

vs.

WESTERN OIL & GAS ASSOCIATION, et al.,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX (Vol. III)

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Appeal docketed July 5, 1984
Probable jurisdiction noted October 1, 1984

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

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LEASE BETWEEN CITY OF LONG BEACH AND EXXON CORPORATION

LEASE AND LICENSE AGREEMENT

This Agreement is made and entered into, in duplicate, as of the 5th day of July, 1974, pursuant to Ordinance No. HD-1038, adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of June 3, 1974, by and between the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners, hereinafter referred to as "City", and Exxon Corporation, a New Jersey corporation, with a place of business at 1800 Avenue of the Stars, Los Angeles, California 90067, hereinafter referred to as "Lessee".

WHEREAS, City and Powerine Oil Company, as Lessee, entered into a Lease and License Agreement as of January 1, 1963, pursuant to Ordinance No. HD-657 of the Board of Harbor Commissioners of the City of Long Beach, wherein Powerine Oil Company was granted a lease of certain property upon which it constructed a tank farm for the storage of fuel oil and petroleum products, and wherein it was granted an exclusive license and permit to lay, construct, use, operate, maintain, repair, and renew two (2) fuel oil-bunkering pipelines in certain areas for the purpose of bunkering ships with its fuel oil, together with certain optional rights; and

* * *

WHEREAS, Lessee and City entered into a new Lease and License Agreement as of July 6, 1972, to supplant the above-mentioned Lease and License Agreement, which incorporated rights, privileges and obligations of other agreements, terminated said Agreement and another agreement, and provided for leasing additional land and water areas, and related facilities from City, and for installation of additional storage and bunkering facilities as therein provided; and

WHEREAS, Lessee and City desire to enter into a new Lease and License Agreement to supplant the Lease and License Agreement entered into as of July 6, 1972 * * * ; and

WHEREAS, the construction, operation and maintenance of fuel oil-burning services by Lessee will further promote and aid commerce and navigation in the Port of Long Beach;

NOW, THEREFORE, in consideration of the foregoing, and of the covenants, conditions and agreements herein contained, City, for itself, its successors in interest and assigns, and Lessee, for itself, its successors in interest and assigns, do hereby respectively agree to keep and perform all of the covenants, conditions and agreements hereinafter provided to be kept and performed by City and Lessee, respectively, to wit:

1. *TERM.* The term of this Agreement shall commence as of the first day of the month following the date of execution hereof by the General Manager of the Long Beach Harbor Department, and shall terminate June 30, 2010.

This agreement may, at Lessee's option, be terminated as of the last day of June in 1990 or 2000. Such option to cancel shall be exercised by written notice given by Lessee to City on or before the first day of January in the year in which the Agreement is to be terminated.

2. *PREMISES.*

a. *Leased Premises.* Effective as of the commencement of the term of this Agreement, except as otherwise provided, City does hereby grant, and Lessee accepts:

(1) An exclusive lease of those certain premises on Pier A in the Harbor District of the City of Long Beach, containing approximately 160,886 square feet, and designated Parcel 1 on Harbor Department Draw-

ing HD 4-31 attached hereto and by this reference incorporated herein.

(2) An exclusive lease of those certain premises at Berth 211-A, Pier A, in the Harbor District of the City of Long Beach, containing approximately 15,412 square feet, and designated Parcel 2 on said Harbor Department Drawing HD 4-31 attached hereto.

(3) An exclusive lease of that certain water area at Berth 211-A in the Harbor District of the City of Long Beach, containing approximately 15,211 square feet, and designated Parcel 3 on said Harbor Department Drawing HD 4-31 attached hereto. City reserves the right to itself and third parties to use said water area for navigational purposes to the extent the same is not used by Lessee pursuant to this Agreement.

Said Parcels 1, 2 and 3 are referred to herein as the "Leased Premises" or the "premises". The legal descriptions of said parcels are set forth in Exhibit "A", attached hereto and by this reference incorporated herein.

b. *Licensed Premises.* Effective as of the commencement of the term of this Agreement, City does hereby grant, and Lessee accepts:

(1) An exclusive license and permit to lay, construct, use, operate, maintain, repair, and renew fuel oil and diesel fuel underground bunkering pipelines, and related surface and subsurface appurtenances and facilities, for the purpose of bunkering vessels with Lessee's own (within the contemplation of Paragraph 3d(1)) fuel oil or diesel fuel on Piers A, B, C, D, F, G and J at the berths served by the pipelines depicted on Harbor Department Drawings HD 3-149-1, HD 3-149-2 and HD 149-3 attached hereto and by this reference incorporated herein.

* * *

d. *Assigned Premises.* Effective as of the commencement of the term of this Agreement, City does hereby grant, and Lessee accepts, a tertiary berth assignment for use of the wharf and wharf premises and the water area adjacent thereto required for the berthing of vessels, at Berths 209 and 210, Pier A. Lessee's right to use said wharf and berth facilities is subject to (1) the preferential berth assignment of Berth 210 granted by the Bulk Commodity Terminal Lease (Document No. HD-1332) entered into as of May 2, 1966, as amended, by and between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and Koppel Bulk Terminal, (2) the secondary berth assignment of Berths 209 and 210 granted by the Lease and License Agreement (Document No. HD-2238) entered into as of June 30, 1972, by and between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and National Molasses Company, and (3) to the rights granted by that certain lease entered into as of November 4, 1970, between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and Ocean Salt Co., Inc. (Document No. HD-2068) with respect to the location of the overhead conveyor system at Berth 209.

e. *Exceptions, Reservations and Encumbrances.* There are excepted and reserved from the Leased Premises, from the Licensed Premises and Optional Licensed Premises and from the Assigned Premises all minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals, or any part thereof, from said premises without, however, the right of surface entry.

This Lease and License Agreement and all rights granted to Lessee hereunder are subject to restrictions, reservations, conditions and encumbrances of record, including,

without limitation, the following legislative grants, to wit: Chapter 676, Statutes of 1911; Chapter 102, Statutes of 1925; and Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956, First Extraordinary Session; Chapter 138, Statutes of 1964, First Extraordinary Session; the Charter of the City of Long Beach, the federal navigational servitude and, in addition thereto, any off-record matters affecting said Leased Premises of which Lessee has actual notice.

3. *USES.*

a. *The Leased Premises.* Parcel 1 and 2 may be used by Lessee for the construction, erection, installation, use, operation, maintenance, repair, and renewal of tank storage for Lessee's fuel oil, diesel fuel, other petroleum products and crude oil, and for related appurtenances and facilities, including, but not limited to, necessary electrical pumping facilities, warehouses, and office buildings, in conjunction with the operation by Lessee of its fuel and diesel oil-bunkering services under this Agreement. Parcel 3 may be used for the berthing and mooring of vessels, including barges, and for their loading and unloading, in conjunction with Lessee's operations.

b. *The Licensed Premises.* The Licensed Premises shall be used by Lessee to lay, construct, operate, maintain, repair, remove, extend, alter, and renew pipelines for the transportation of Lessee's own (within the contemplation of Paragraph 3d(1)) crude oil, fuel oil, diesel fuel and other petroleum products from the Leased Premises to vessels, including barges, at the berths of the Port of Long Beach and return lines for flushing purposes, together with all traps, manholes, and related surface and subsurface appurtenances and facilities thereto, for ingress to and egress from the same, along the pipeline routes shown on said Drawings HD 3-149-1, HD 3-149-2 and HD 3-149-3.

c. *The Assigned Premises.* The Assigned Premises may be used for the berthing of vessels, including barges, thereat and for the loading and unloading and other disposition of liquid bulk commodities between said vessels and barges at said premises and the wharf premises, for the embarking and disembarking of passengers and crew members and their baggage, and for the loading and unloading of vessels' stores and supplies. Whenever said Assigned Premises, or any part thereof, are not required, in whole or in part, by Lessee for the uses permitted under this tertiary assignment, the General Manager shall have the right to, and may make, temporary assignments to any other person, firm or corporation to use said Assigned Premises, or any part thereof, as provided in Port of Long Beach Tariff No. 3, as the same may exist or may be hereafter amended, or the successor to such tariff.

d. Lessee's operations conducted upon the Leased, Licensed and Assigned Premises shall be restricted to the following:

(1) A proprietary operation in which title to the crude oil and refined petroleum products, chemicals, liquids, and dry cargo referred to above shall be vested in Lessee at the time such commodities pass over the wharf from vessel or barge, or shall become vested in Lessee at some point in Lessee's pipeline or storage system on the Leased Premises, Licensed Premises or Assigned Premises, in accordance with the provisions of a purchase or exchange agreement. Lessee may load crude oil, fuel oil, diesel fuel and refined petroleum products, chemicals, liquids, and dry cargo referred to above aboard common carriers by water or any other vessel common carriers by water or any other vessels or barges at the wharf structure located on the Leased, Licensed or Assigned Premises for use or carriage by said vessels or barges, provided Lessee has title to said commodities up to the time the same pass ship's rail.

(2) An operation whereby Lessee may receive, handle, load, unload, and transport crude oil and refined petroleum products, chemicals, liquids, and dry cargo referred to above, owned by others, provided that the same shall not be loaded into or discharged from vessels that are common carriers by water, as said term is defined in the Shipping Act, 1916, as amended.

* * *

4. *CONSTRUCTION OF IMPROVEMENTS BY LESSEE.* Lessee agrees to install, or have installed, at its sole cost and expense, fencing and fire protection equipment, as may be required by the Long Beach Fire Department, on the Leased, Licensed and Assigned Premises.

In addition to the improvements described above, Lessee may, at its sole cost and expense, construct, erect and install additional buildings, structures and improvements and may make alterations thereto and to existing improvements, buildings and structures upon the Leased Premises, and may construct, erect and install improvements and may make alterations thereto and to existing improvements upon the Licensed Premises, provided that such additional buildings, structures and improvements and alterations shall not be installed, erected, constructed or made except in accordance with (a) plans and specifications previously submitted to the General Manager and approved in writing by him, and (b) the covenants, conditions and agreements of this Agreement. Said approval shall not be unreasonably withheld.

5. *RENTAL.*

a. *Rental of Leased Premises.*

(1) *Parcel 1.* Lessee shall pay to City, as rental for the use of Parcel 1, the sum of Three Thousand Six Hundred Nineteen and 93/100 Dollars ($3,619.93) per month, in advance, on the first day of each calendar month while this Agreement is in effect.

(2) *Parcels 2 and 3.* Lessee shall pay to City, as rental for the use of Parcels 2 and 3, the sum of Two Thousand Five Hundred Fifty-Two and 58/100 Dollars ($2,552.58) per month, in advance, on the first day of each calendar month while this Agreement is in effect. * * *

(4) The foregoing rental for said Parcels 1, 2 and 3 shall be in lieu of tariff charges assessed by City in accordance with applicable Port of Long Beach tariffs, as hereinafter mentioned, but tariff charges shall be applicable when accruing in connection with Lessee's operations upon the Licensed and Assigned Premises as provided in Paragraph 7 herein.

b. *Rental of Licensed Premises.* Lessee shall pay to City, as rental for the use of the Licensed Premises, a sum computed from the pipeline rental fees prescribed in Section 7560.9 of the Municipal Code of the City of Long Beach, at the annual rates, in cents, per inch of nominal diameter (not including protective casing) per lineal foot per year of the pipelines installed and maintained pursuant to this Agreement, subject to such annual fee adjustments resulting from the application of the provisions of said Section 7560.9, as directed by the Board of Harbor Commissioners. Said Section 7560.9 provides for an annual adjustment of the base rates set forth therein, based on the "Index Number of Wholesale Prices" of the United States Bureau of Labor Statistics.

Said rental for the Licensed Premises shall be paid annually in advance; and in the event of an installation or removal or abandonment of pipeline facilities during an annual period, the payments otherwise due City for use of said Licensed Premises by such facilities shall be prorated for said annual period as of the end of the calendar month in which such installation, removal or abandonment is approved by City's Board of Harbor Commissioners. After

Lessee has completed each installation or abandonment of pipelines on the Licensed Premises, the rental may be adjusted on the basis of the actual length of pipelines in place in accordance with the lengths depicted on the "as-built" drawings to be furnished by Lessee.

* * *

7. *TARIFF CHARGES.* Lesseee shall pay, or cause to be paid, to City the total amount of all applicable charges accruing in connection with Lessee's operations upon the Licensed Premises and the Assigned Premises (including, but not limited to, wharfage, wharf demurrage, wharf storage and dockage) under the schedule of rates covering the use of wharves and wharf premises and other facilities and appliances owned, controlled or operated by the City of Long Beach, as the same have been or may be prescribed by the Board of Harbor Commissioners of the City of Long Beach in Port of Long Beach Tariff No. 3, as the same may exist or may be hereafter amended, or the successor to such tariff, or otherwise by law.

In connection with the payment of said tariff charges, Lessee shall file, or cause to be filed, statements as follows: (a) On or before the twentieth day following the departure of each vessel docking at berths in the Port of Long Beach served by Lessee's bunkering facilities, Lessee shall file, or cause to be filed, with the General Manager, on forms approved by City, a statement verified by the oath of Lessee's manager or other duly authorized representative, showing all charges which shall have accrued at said premises for dockage, wharfage and other applicable charges with reference to each such vessel; (b) On or before the tenth day of each month, Lessee shall file, or cause to be filed, with the General Manager, on forms approved by City, a statement verified by the oath of Lessee's manager or other duly authorized representative, showing all charges which shall have accrued at said premises for wharfage where the departure of a vessel is not involved, and for all wharf de-

murrage, storage and other charges, if any, during the preceding calendar month.

Lessee shall keep full and accurate records relating to its operations on said Leased, Licensed and Assigned Premises, and the records which are pertinent to the provisions of this Agreement shall be subject to inspection by representatives of City at any and all reasonable times during normal business hours, and copies may be made of any and all such records.

City agrees that it will not, during the term of this Agreement, control or limit any charge Lessee may make any of its customers for, or based upon, transportation of any fuel oil, diesel fuel, crude oil, or other petroleum products, chemicals, liquids or dry cargo commonly used or dealt in by those engaged in the petroleum industry, within or across the Leased, Licensed or Assigned Premises (this does not pertain to dockage or wharfage).

* * *

9. *DUTY TO REPAIR AND RESTORE.* Except as otherwise provided herein, Lessee shall operate, keep and maintain the Leased Premises and all improvements thereon, whether owned by City or Lessee, in good and substantial repair and condition, and shall make all necessary repairs and alterations thereto and perform all necessary maintenance thereof, all at its sole cost and expense.

Except as provided herein, City shall not be required at any time to make any improvements or repairs, or perform any maintenance whatsoever, on or for the benefit of the Leased, Licensed or Assigned Premises or any improvements of any kind constructed, erected or installed thereon.

Lessee agrees to provide proper containers for trash and to keep the Leased, Licensed and Assigned Premises free and clear of rubbish, debris and litter resulting from its operations at all times, and to keep and maintain all of said premises in a safe, clean, wholesome and sanitary

condition under all applicable federal, state, municipal and other laws, ordinances, rules and regulations. No offensive or refuse matter, nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard, nor material detrimental to the public health, shall ever be permitted to be or remain on or be disposed of in water adjacent to the Leased, Licensed or Assigned Premises, and Lessee shall prevent such material or matter from being or accumulating upon said premises.

Upon the termination of this Agreement, whether by expiration or otherwise, all improvements of Lessee located on the Leased, Licensed or Assigned Premises shall, at the option of City, be removed by Lessee at Lessee's sole cost and expense; and Lessee shall restore the Leased Premises to a smooth graded, unimproved state and restore the Licensed Premises to the condition the same were in immediately prior to the commencement of such removal. City shall give written notice to Lessee of City's election, with respect to removal of the improvements, not later than ninety (90) days prior to the termination of this Agreement. City may so elect for Lessee to remove a portion or portions only of the improvements and, in such case, Lessee shall remove only the portion or portions specified by City in its written notice of election. All pipelines not removed pursuant to City's election shall be abandoned in place in accordance with the conditions specified by the General Manager.

10. *SPECIAL PROVISIONS RELATING TO THE LICENSED PREMISES.*

a. *Installation of Pipelines.* Lessee shall install pipelines underground or beneath the wharf apron at the schematic locations shown on said Harbor Department Drawings HD 3-149-1, HD 3-149-2 and HD 3-149-3, and at elevations and locations approved in writing by the General Manager. The pipelines hereby authorized shall be in-

stalled only in accordance with plans and specifications previously submitted to the General Manager of the Harbor Department with the application for this permit and as approved by him. * * * Relocation or alteration of other underground pipelines, and installations of any kind or nature, whether above or below ground, and whether owned by City or by third parties, required in connection with Lessee's installation of its pipelines and facilities shall be at the sole cost and expense of Lessee.

* * *

d. *Use of Lands by City.* City, its successors and assigns, shall have full use and enjoyment of the Licensed Premises, except as to the rights and privileges hereby granted to Lessee.

e. *Permit Not Exclusive.* The license and permit hereby granted for the construction, operation and maintenance of ships' fuel oil-bunkering services by said pipelines shall be exclusive. However, City reserves the right to grant to other persons, firms or corporations licenses and permits to lay, maintain, operate, repair, renew, and remove pipelines other than for ships' fuel-bunkering services.

f. *Alterations.* Lessee shall, at its own cost and expense, alter said pipelines and change the location thereof whenever and as often as City deems it convenient or necessary on account of any construction authorized, permitted or contemplated by City, and Lessee shall commence such alteration or change of location, or both, within thirty (30) days after the receipt of a written notice from City so to do and shall proceed to complete the same with due diligence thereafter; provided, however, that after the original location has been approved by City, the expense of alteration and relocation of a pipeline for the sole convenience of per-

sons other than City and Lessee shall be borne by such others.

* * *

g. *Repairs to Pipelines.* Whenever the pipelines shall suffer failure or incur damage which will cause or permit the escape of the contents therefrom, it shall be the duty of Lessee to immediately make such repairs as will insure the future safe and proper operation of said pipelines and facilities, and Lessee shall make such cleanup and repairs as shall be required by City. Lessee shall also be responsible for the repair or replacement of any property and facilities caused to be damaged by the occurrence of the escape of the contents from the pipelines.

h. *Subject to Encumbrances.* This license and permit is granted subject to any and all existing leases, easements, licenses, permits or other encumbrances, and City reserves the right to grant further permits, licenses, easements, franchises or leases in, over, upon, along or across the Licensed Premises and the Optional Licensed Premises for purposes other than ships' fuel oil-bunkering services. City reserves the right to dedicate the Licensed Premises, the Optional Licensed Premises, or any part thereof, or to grant an easement across said Licensed Premises, Optional Licensed Premises, or any part thereof, for street purposes. Lessee shall not be liable for rental for the immediate area affected to the extent that, during any rental period, it is so prevented from exercising its rights hereunder as to such area. All such further permits, licenses, easements, franchises and leases shall be so located that a minimum of interference with Lessee's use of the premises covered by this Agreement is encountered.

i. *City Not to Incur Expense.* City shall not, at any time or under any circumstances, be required to construct, reconstruct, maintain or repair the pipelines, appliances, attachments, or appurtenances thereto installed by Lessee upon the Leased Premises, the Licensed Premises, the Op-

tional Licensed Premises, the Assigned Premises, or any part thereof, or to incur any expense or obligation or become liable for any damages whatsoever on account thereof except expense, obligation or damage arising from the sole negligence of City, its officers, agents or employees.

11. *INDEMNIFICATION.* Lessee shall indemnify, hold, protect and save harmless the City of Long Beach and any and all of its boards, officers and employees, from and against any and all actions, suits, proceedings, claims and demands, loss, liens, cost, expense and liability, of any kind or nature whatsoever, for injury to or death of persons or damage to property (including property owned by said City), which may be brought, made, filed against, imposed upon or sustained by said City, its boards, officers or employees, and which, in whole or in part, arise from or are attributable to or are caused, directly or indirectly, through negligence or otherwise, by the use of, or operations conducted upon, the Leased Premises, the Licensed Premises, the Optional Licensed Premises, the Assigned Premises or any portions thereof, or all, whether such use or operation be made or performed by Lessee, its officers, agents or employees, or by any person or persons acting with the knowledge and consent, express or implied, of Lessee, except claims and liabilities arising from the sole negligence of City, its officers, agents or employees.

12. *DESTRUCTION OR DAMAGE TO LESSEE'S IMPROVEMENTS.* In the event of destruction or damage to the improvements constructed, erected or installed by Lessee hereunder, by fire or any of the hazards covered by a standard form of fire insurance policy bearing an extended coverage endorsement, or by any other cause, said improvements shall be restored by Lessee, with reasonable diligence, to a condition suitable for Lessee's use; or Lessee, at its option, shall have the right to terminate this Agreement by written notice to City. In the event Lessee exercises its option to terminate this Agreement, or should

Lessee fail to restore said improvements with reasonable diligence, the Leased Premises and pipeline rights of way shall be restored as herein provided in Paragraph 9, and Lessee agrees to surrender all of said Premises to City.

13. *RIGHTS OF WAY AND ENCUMBRANCES.* This license and permit is granted subject to rights of way and entry upon the Leased, Licensed and Assigned Premises for the installation, relocation, removal, operation, and maintenance of sewers, pipelines, conduits and telephone, telegraph, light, heat or power lines, whether underground or overhead, as may from time to time be determined by the Board of Harbor Commissioners, as provided in subsection (f) of Section 229a of the Charter of the City of Long Beach. Said rights of way shall be so located that a minimum of interference with Lessee's use of the Leased, Licensed and Assigned Premises is encountered.

* * *

16. *UTILITY SERVICES.* Lessee shall provide, at its own expense, all utility installations and services required by Lessee upon the Leased Premises, including connections to the nearest gas, sewer, telephone, electric and water lines at points designated by City, and Lessee shall pay, before delinquent, all utility costs and charges required or used by it in connection with its use of the Leased, Licensed and Assigned Premises.

* * *

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures:

[Subscriptions and attachments omitted in printing]

COUNTY OF LOS ANGELES LEASE

LEASE

THIS LEASE Made this day of , 1961, by the County of Los Angeles, hereinafter called "County", ~~and~~ [name of lessee deleted in original], hereinafter called "Lessee," WITNESSETH:

That in consideration of the terms, conditions, and covenants herein contained, to be kept and performed by the parties hereto and the strict, prompt and punctual performance of each of the terms, conditions, and covenants by Lessee on his part agreed to be kept and performed, County by these presents does lease and demise unto Lessee, and Lessee by these presents does lease, hire, and take from County the following described parcel or parcels of land or water, consisting of a total of 297,500 square feet and situated in the Marina del Rey Small Craft Harbor of the County of Los Angeles, State of California, more particularly described as follows, to-wit: Parcel Number Fourteen (14) more particularly described in Exhibit "A" attached hereto and incorporated herein.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon terms and conditions as follows:

1. DEFINITION OF TERMS

The following words have in this lease the significance attached to them in this paragraph, unless otherwise apparent from the context:

"BOARD" means the Board of Supervisors of the County of Los Angeles.

"COUNTY" means the County of Los Angeles.

"DEPARTMENT" means the Department of Small Craft Harbors of the County of Los Angeles.

"DIRECTOR" means the Director of the Department of Small Craft Harbors of the County of Los Angeles.

The words "SHALL" and "WILL" are mandatory and the word "MAY" is permissive.

The word "SECTION" means a section of this lease.

The word "PROPERTY" includes both real and personal property.

The word "SUBLEASE" includes licensee, permittee, concessionaire, assignee or transferee of or from Lessee with respect to any interest in the property demised under this lease.

* * *

2. TERM.

The term of this lease shall be sixty (60) years, commencing upon the eighth (8th) day of June A.D. 1961.

3. PURPOSE OR USE OF PROPERTY.

The leased premises shall be used only and exclusively for anchorage and related uses and for purposes incidental thereto; and for no other purposes whatsoever without the written approval of County; the uses and purposes above listed are set forth to define the maximum contemplated scope of permissible uses and purposes, and their enumeration is not intended to be authorization for any specific use or purpose.

It is also expressly understood that the uses of the said premises which are permitted hereinabove do *not* include the following:

A—Fuel sales

B—Repairs other than minor servicing or owner maintenance

C—Live bait sales

D—Sportfishing or charter boat activity

There shall be no actual construction upon said premises except that required by Sections 5 and 6 hereof, and except that additional construction allowed upon approval of Director pursuant to Section 9 hereof.

The Lessee shall conform to and abide by all rules and regulations relating to the operations herein authorized and shall be subject at all times to the rules and regulations adopted by the Los Angeles County Department of Forester and Fire Warden or the Department, ordinances of the County of Los Angeles, and all Statutes and administrative rules and regulations of the Federal Government and the State of California applicable thereto, and where permits are required for such operations, the same must first be had and obtained from the Los Angeles County Forester and Fire Warden or other regulatory body having jurisdiction thereof before such operations are undertaken.

4. ACTIVE PUBLIC USE.

The ultimate object of this lease is the complete and continuous use of the premises herein demised by and for the benefit of the public, without discrimination as to race or religion, the immediate object being the development and realization of the greatest possible revenue therefrom. It is agreed that said immediate and ultimate objects are consistent and compatible. Accordingly, Lessee covenants and agrees that he will operate said premises fully and continuously to the end that the public may enjoy maximum benefits and County may obtain maximum revenue therefrom.

* * *

5. PLANS AND SPECIFICATIONS FOR REQUIRED CONSTRUCTION.

Prior to commencing construction and within one hundred twenty (120) days after the commencement of the term of this lease, for water uses and sanitary facilities required thereby, and one hundred twenty (120) days after the commencement of the term of this lease and for uses other than water uses and sanitary facilities required thereby, Lessee shall file with Department six (6) sets of final plans and specifications for the construction of the following improvements upon the aforesaid premises: anchorage and related

uses the cost of which land and water improvements shall not be less than the total sum of Five hundred seventy thousand and 00/100 Dollars ($570,000.00) in combination with Parcels Eleven (11) and Thirteen (13).

Such final plans and specifications shall conform to the minimum standards of construction and architectural treatment for Marina del Rey Small Craft Harbor as adopted by the Board on January 3, 1961, and shall be subject to approval by Director and the County Engineer. No construction shall begin until said Director and Engineer have approved said final plans and specifications.

No modification of the approved plans and specifications or of said improvements, including landscaping, shall be made by Lessee without the prior approval of said Director and Engineer.

6. REQUIRED CONSTRUCTION SCHEDULE.

Lessee expressly covenants and agrees that within Forty-five (45) days after the approval of the final plans and specifications for water uses and sanitary facilities required thereby as provided for in Section 5 and that within Sixty (60) days after the approval of final plans and specifications for uses other than water uses and sanitary facilities required thereby as provided for in Section 5, Lessee shall in good faith commence construction of the improvements described therein, including required underground laterals for power, light, telephone, television, sewer, water (including fire lines) and gas lines, and landscaping, in accordance with said approved plans and specifications, and shall diligently prosecute such construction and shall complete the same not later than Three hundred (300) days thereafter for water uses and sanitary facilities required thereby and Seven hundred thirty (730) days thereafter for uses other than water uses and sanitary facilities required thereby; provided that any delay in construction due to fire, earth-

quake, war, labor dispute, or other event beyond control of Lessee shall extent the time in which said construction must be completed by the length of time of such delay.

Failure of Lessee to commence said work within said time shall, upon written notice thereof to Lessee by Board, ispo facto effect a forfeiture of this lease and all rights of Lessee thereunder.

* * *

9. ADDITIONAL CONSTRUCTION.

Lessee may, at its own expense, make or construct, or cause to be made or constructed, improvements other than those required by Sections 5 and 6, additions, alterations, repairs, or changes in the leased premises provided such proposed improvements, additions, alterations, repairs, or changes are within the scope of permissible uses set forth in Section 3, and further provided that each specific proposed improvement, addition, alteration, repair, or change must first have the written approval of Director.

* * *

10. LANDSCAPING.

Lessee shall, at its own cost and expense and to the satisfaction of County, install and maintain landscaping upon the demised premises. A general layout of proposed landscaping shall be submitted as part of the plans and specifications for all proposed improvements of the site. This will include the landscaping of all areas between any street and set back lines and such other areas as are necessary to create a pleasing development of the project as a whole. All landscaping plans and layout must have the approval of Director.

* * *

12. GROSS RECEIPTS.

The term "gross receipts" as used in this lease is defined to be all money, cash, receipts, assets, property, or other things of value, including but not limited to, gross charges,

sales, rentals, fees, and commissions made or earned, and all gross sums received or earned by Lessee, his assignees, sublessees, licensees, permittees, or concessionaires, whether collected or accrued, from any business, use or occupation, or any combination thereof, originating, transacted, or performed, in whole or in part, on the premises, including but not limited to, rental, the rendition or supplying of services, and the sale of goods, wares, or merchandise; less sales and excise taxes applicable thereto, required to be collected by Lessee, his assignees, sublessees, licensees, and permittees in connection with the rendering or supplying of services or goods, wares, or merchandise.

There shall be no deduction from gross receipts for any overhead or cost or expense of operation, such as, but without limitation to, salaries, wages, cost of goods, interest, debt amortization, discount, collection, credit card and bad debt charges, insurance, and taxes, except as specifically provided for herein.

Gross receipts shall include the amount of any manufacturer's or importer's excise tax included in the prices of any property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross receipts, however, shall not include Federal, State, Municipal or other taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid periodically by Lessee to a governmental agency, accompanied by a tax return or statement, but the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

13. SQUARE FOOT AND HOLDING RENTALS.

Lessee shall pay to County an annual square foot rental in twelve (12) equal monthly installments. Said installments shall be due and payable in advance upon the first

day of each calendar month, starting with the calendar month next succeeding the date of substantial completion of the improvements required to be constructed pursuant to Sections 5 and 6, or starting with the calendar month next succeeding the commencement of use by the public of any of the improvements required to be constructed pursuant to Sections 5 and 6 or of any portion of the premises herein demised.

* * *

The aforesaid annual square foot rental for the whole of the premises herein demised shall be eight and one-half cents ($0.085) per square foot of water area and eight and one-half cents ($0.085) per square foot of land area, or the total of Twenty-five thousand two hundred eighty-seven and 50/100 Dollars ($25,287.50).

Prior to the start of square foot rental payments as in this section above provided for, Lessee shall pay to County each month in advance a "holding rental" consisting of one-third of the contemplated total monthly installment of square foot rental, starting on the eighth (8th) day of June, 1961. In the event of the start of proportionate square foot rentals under a program of progressive completion, as in this section above provided for, the "holding rental" shall be abated for that portion of the completed improvements and adjoining area thus made subject to square foot rental.

* * *

14. PERCENTAGE RENTALS.

The square foot rental agreed upon in Section 13 is a minimum rental, payable in lawful money of the United States. The money received as square foot rental for any calendar month shall be applied to the payment of the percentage rental for said calendar month as provided for in this Section 14.

Within fifteen (15) days after the close of each and every calendar month of the term hereof, Lessee shall pay to County a sum in like money, less the amount of the monthly

installment of annual square foot rental previously paid for said calendar month under Section 13, and during the first five years of the term hereof, also less the credit for improvements hereinafter in this Section 14 provided for, equal to the total of the following for said previous calendar month:

(a) TWENTY Per Cent (20%) of gross receipts from the rental of boat slips, anchorage tie-ups, or storage areas;

(b) TWENTY-FIVE Per Cent (25%) of gross receipts from the launching and retrieving of small boats;

(c) TWENTY-FIVE Per Cent (25%) of gross receipts from the dry storage of boats;

(d) SIX Per Cent (6%) of gross receipts from sales of used boats, ship chandlery supplies, fishing tackle, paints, varnishes, and similar commodities, and from commissions from the sale of new boats;

(e) SIX Per Cent (6%) of gross receipts from boat haulout, repair, painting, and similar activities;

(f) TWENTY Per Cent (20%) of gross receipts from insurance sales or boat sale brokerages;

(g) TWO Cents ($0.02) per each gallon of gasoline sold;

(h) ONE AND ONE-HALF Cents ($0.015) per each gal. of diesel fuel sold;

(i) THREE Cents ($0.03) per each gal. of mixed fuel sold;

(j) FIVE Per Cent (5%) of gross receipts from sale of petroleum or fuel products other than those covered by subparagraphs (g), (h), and (i) above;

(k) FIVE Per Cent (5%) of gross receipts from the sale of food or food products and alcoholic or other beverages served on the demised premises or prepared on the premises and served off the premises;

(l) SIX Per Cent (6%) of gross receipts from the sale of packaged liquor;

(m) TEN Per Cent (10%) of gross receipts from the sale of alcoholic or other beverages prepared and served on the demised premises or prepared on the premises and served off the premises when no food or food products are prepared and served therewith;

(n) FIFTEEN Per Cent (15%) of gross receipts from club initiation fees and club dues;

(o) FIFTEEN Per Cent (15%) of gross receipts from the rental of hotel rooms, guest rooms, meeting rooms, or other similar space;

(p) TWENTY Per Cent (20%) of gross receipts from rentals or other fees charged for use of trailer-cabana sites, motels, boatels, and cabanas;

(q) TWENTY Per Cent (20%) of gross receipts from parking fees;

(r) SIX Per Cent (6%) of gross receipts from the operation of sports fishing boats;

(s) SIX Per Cent (6%) of gross receipts from miscellaneous activities such as sportswear shops, beauty shops, specialty food shops, and gift shops;

(t) FIVE Per Cent (5%) of gross receipts from coin vending machines;

(u) TWENTY-FIVE Per Cent (25%) of gross receipts received by Lessee from the telephone company as compensation for pay telephones located on the leasehold;

(v) TWENTY Per Cent (20%) of gross receipts from any and all service charges or labor charges;

(w) TEN Per Cent (10%) of gross receipts from apartment rentals;

(x) FIVE Per Cent (5%) of gross receipts from all other activities carried on on said premises.

During the first five (5) years of the term hereof, Lessee shall be allowed a credit each calendar month upon the payment of the percentage rental hereinbefore in this Section 14 required, in the amount of one-half of the total of said percentage rental due hereunder for said calendar month in excess of the minimum square foot rental installment previously paid for said calendar month; the total of said monthly credits shall not exceed the minimum required money expenditure for improvements specified and required to be constructed pursuant to Section 5 hereof.

If the total of the percentages of gross receipts agreed to be paid by Lessee for any calendar year exceeds the sum of the Square Foot Rental, but is less than the total of monthly payments actually made by the Lessee for said calendar year, Lessee shall be allowed credit at the end of said calendar year for the difference between the said total of percentages agreed to be paid and said total of payments actually made.

If any of the items, services, goods or facilities mentioned in subparagraphs (a) through (x) of this paragraph be provided by Lessee or its sublessees, assignees, licensees, concessionaires, or permittees, without the usual charges therefor according to the price list or schedule provided for in Section 16, or if said usual charge be not collected in full, the proper amount thereof shall nevertheless be included in the gross receipts reported by Lessee and its sublessees, assignees, licensees, concessionaires, and permittees, and the applicable percentage thereof paid to County.

15. RENT RENEGOTIATION AND ARBITRATION. The square foot and percentage rentals hereinbefore provided for shall apply to and be in effect for the first five (5) years of the term hereof. The square foot and percentage rentals for the remainder of said term shall,

be determined by renegotiation and arbitration, as hereinafter provided, without limit as to amount, except that at all times during the term of this lease the total rentals shall be in such amount that the property hereby demised shall produce at least its proportionate share of the revenue required by Government Code, Section 26360 and the revenue required to meet the obligations of County under that certain Revenue Bond Resolution of the County Board of Supervisors referred to in Section 46; and, notwithstanding the renegotiation and arbitration provisions of this Section 15, the minimum rental under this lease shall never be lower than the product of six cents ($0.06) multiplied by the square feet of the leased land and water area.

The rentals for the remainder of said term shall be readjusted as follows for each succeeding period of ten (10) years;

Such rentals shall be readjusted by Lessee and County, in accordance with standards of and for fair market value hereinafter set forth, at some time not more than nine (9) months and not less than six (6) months before the beginning of each such ten-year period; in the event Lessee and County cannot agree upon the readjustment of rentals, the same shall be determined by a board of three (3) real estate appraisers, one of whom shall be appointed by County, one by Lessee, and the third by the two (2) appraisers so appointed.

* * *

The board of real estate appraisers shall, immediately upon the appointment of its members, enter upon the discharge of its duties and determine the amount of readjusted rentals and notify the parties thereof in writing within sixty (60) days after its appointment. A majority of the real estate appraisers who agree thereto may readjust such rentals, such readjustment to be based upon a determination of the fair market value of this lease, taking into consideration the uses permitted thereunder and all of

its terms, conditions, and restrictions, franchise value, earning power, and all of the factors and data relating to such value required or proper to be considered in determining the fair market value of leaseholds under the laws of eminent domain in the State of California; also provided that at all times during the term of this lease the total of such rentals shall be in such amount that the property hereby demised shall produce at least its proportionate share of the revenue required by Government Code, Section 26360 and the revenue required to meet the obligations of County under that certain Revenue Bond Resolution of the County Board of Supervisors referred to in Section 46; and, notwithstanding the renegotiation and arbitration provisions of this Section 15, the minimum rental under this lease shall never be lower than the product of six cents ($0.06) multiplied by the square feet of the leased land and water area. * * *

18. DISPOSITION OF INSTALLATIONS OR IMPROVEMENTS.

Title to all structures, buildings, or improvements constructed by Lessee upon the demised premises, and all alterations, additions or betterments thereto, shall remain in Lessee until termination of this lease; and upon such termination, whether by expiration of the term hereof, cancellation for good cause, forfeiture, or otherwise, title to said structures, buildings, improvements, and all alterations, additions, or betterments thereto, and all improvements made to or upon said premises, shall, at the option of County, vest in County without compensation therefor to Lessee, and said structures, buildings, and improvements shall remain upon and be surrendered with the premises as part thereof.

However, County may require Lessee, prior to the expiration of the term of this lease, or any sooner termination of this lease, to remove, at the sole cost and expense of Les-

see, all works, structures, and improvements of any kind whatsoever placed or maintained on said premises, whether below, on, or above the ground by Lessee or others, including, but not limited to, wharves, piers, docks, slips, bulkheads, seawalls, piling, channels, concrete foundations, structures, and buildings; and Lessee shall, upon the expiration of the term of this lease or upon any sooner termination of this lease, immediately restore, and quit, and peacefully surrender possession of, said premises to County in at least as good and usable a condition, acceptable to the Director, as the same were in at the time of first occupation thereof by Lessee or others, ordinary wear and tear excepted, and shall, in any event, leave the surface of the ground in a level, graded condition, with no excavations, holes, hollows, hills, or humps. Should Lessee fail to so remove said structures, buildings, and improvements and restore said premises, County may sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse County for any cost or expense thereof in excess of any consideration received by County as a result of such sale, removal, or demolition.

* * *

Title to all utility lines, switchboards, transformer vaults, and all other service facilities constructed or installed by Lessee upon the demised premises shall vest in County upon construction or installation.

* * *

26. INDEMNITY CLAUSE AND CASUALTY INSURANCE.

Lessee shall at all times relieve, indemnify, protect and save harmless County and its Boards, officers, agents, and employees from any and all claims and liability, including expenses incurred in defending against the same, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County, or any of its officers, agents, or employees,

that may in whole or in part arise from or be caused by (a) the operation, maintenance, use, or occupation of the herein demised premises by Lessee, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, or permittees, or (c) the failure of Lessee to observe or abide by any of the terms and conditions of this lease or any applicable law, ordinance, rule, or regulation; the obligation of Lessee to so relieve, indemnify, protect and save harmless County, and each of its Boards, officers, and employees, shall continue during any periods of occupancy of or holding over by Lessee, its agents, officers, employees, or permittees, beyond the expiration or other termination of this lease.

* * *

35. MAINTENANCE OF PREMISES.

Lessee shall give prompt notice to County of any fire or damage that may occur from any cause whatsoever. Lessee shall, to the satisfaction of Director, keep and maintain the leased premises and all improvements of any kind which may be erected, installed, or made thereon by Lessee in good and substantial repair and condition, including painting, and shall make all necessary repairs and alterations thereto.

County shall not at any time be required to make any improvements or repairs whatsoever except that County may at its sole discretion do any necessary dredging, filling, grading, slope protecting, construction of sea walls, or repair of water system, sewer facilities, roads, or other County facilities in order to protect the leased premises or the adjoining premises.

Lessee expressly agrees to maintain the leasehold in a safe, clean, wholesome, and sanitary condition, to the complete satisfaction of Director and in compliance with all applicable law. Lessee further agrees to provide proper containers for trash and garbage and to keep the demised premises, both land and water areas thereof, free and clear

of rubbish and litter. County shall have the right to enter upon and inspect the said premises at any time for cleanliness and safety.

36. REPAIRS BY COUNTY.

Lessee shall from time to time make any and all necessary repairs to or replacement of any equipment, structure, structures, or other physical improvements, upon the demised premises, in order to comply with any and all regulations, laws, or ordinances of the State of California, County of Los Angeles, City of Los Angeles, or other governmental body, which may be applicable.

If Lessee fails to make any such repairs or replacements as required, County may notify Lessee of said default in writing, and should Lessee fail to cure said default and make said repairs or replacements within a reasonable time as established by County, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, materials, and equipment, shall be charged against Lessee and shall be paid to County by Lessee.

37. SPECIAL SERVICES.

In addition to the rental charges as herein provided, Lessee shall pay all service charges for furnishing water, power, sewage disposal, light, telephone service, garbage, and trash collection, and all other utilities, to said premises.

* * *

41. RULES AND REGULATIONS.

Leases shall abide by all applicable rules, regulations, resolutions, ordinances, and statutes of the County of Los Angeles, the City of Los Angeles, and the State of California, or other governmental body, where applicable, respecting the use, operation, maintenance, repair, or improvement of the leased premises and equipment, and shall

pay for any and all licenses required in connection with the use, operation, maintenance, repair, or improvement of the leased premises.

* * *

[Subscriptions omitted in original]

STUDY BY URBAN PROPERTY RESEARCH COMPANY

Study of Land Rental Rates and Returns
Being Received on Other High Grade Investments for
State of California States Land Commission

[Letterhead]

January 31, 1975

State of California
State Lands Commission
1807 13th Street
Sacramento, California 95814

Attention: Leslie H. Grimes

SUBJECT: Study of Land Rental Rates

Gentlemen:

In accordance with your authorization, I have prepared a study involving review and analysis of rental rates being secured on commercial, industrial and marina land. The study includes various recommendations together with the reasoning upon which these recommendations are predicated.

Also considered in the study is an analysis and comparison of rates of return being received from Aaa bonds and from land leases.

Respectfully Submitted,

URBAN PROPERTY
RESEARCH COMPANY

/s/ THOMAS W. CLARK, JR.
Thomas W. Clark, Jr., M.A.I.

TWC/jn

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

I. On commercial and industrial land leases where the annual rental is established by a fair market value appraisal to which is applied a rate of return, it is recommended that the annual rental rate of return be 8%.

II. Analysis and comparison of the difference between land lease rates and interest rates being secured on Aaa bonds indicate that the composition of the rate of return is different, and there is not necessarily a significant correlation between the two. It is recommended, therefore, that interest rates on Aaa bonds not be used to determine a rental rate for land leases.

III. It is recommended that serious consideration be given to applying the percentage of gross sales to establish the rental rate for large marina lands and that a simplified method be established using county assessor data to estimate land rents for small "Mom and Pop" marinas.

IV. It is recommended that a review of current rental rates be made every two to four years and that provisions be made in leases for increasing annual rentals either by reevaluation of the property or by tieing the rent to some governmental index.

CERTIFICATION

The undersigned does hereby certify that in this study:

1. I have no personal interest or bias with respect to the subject matter of this report or the parties involved.

2. To the best of my knowledge and belief the statement of fact contained in this study upon which the analyses, opinions and conclusions expressed are based are true and correct.

3. No one other than the undersigned prepared the analyses, conclusions and opinions concerning real estate that are set forth in this report.

/s/ THOMAS W. CLARK, JR.
Thomas W. Clark, Jr., M.A.I.

SCOPE OF STUDY

The purpose of this study is to aid the staff of the State Lands Commission in estimating a reasonable rental rate or rate of return to be applied to land leases involving state lands under their jurisdiction.

Primary emphasis has been on an investigation of market data involving land leases in both the public and private sector of the economy. The majority of the leases, however, are of lands owned by public agencies such as port districts, cities and the State of California since they have more land available for lease than private corporations. Also included in the report is market data relating to percentage leases with regard to marina land. This data can be related to marina land leases in the Sacramento-San Joaquin Delta and at Lake Tahoe.

A comparison of yields being secured on high grade corporate and governmental bonds has also been analyzed and an attempt made to correlate the return on this type of investment with those being received from land leases. Included in this section are some of the current economic theories relating to the real value of money, the effect of inflation and risk. While these theories yield some light on a proper rate of return for a given type investment and tend to explain the thinking of investors in the money market, it is difficult to directly correlate this data to a fair rate of return for leased lands.

The market and economic data investigated has been correlated and analyzed and recommendations made as to various approaches that are applicable to developing reasonable land rental rates and means of reviewing and updating the data.

ANALYSIS OF CURRENT LAND LEASES

Major emphasis in this study has been to collect and analyze market data relating to current land leases by both public agencies and private companies. In addition, the real estate representatives handling these transactions were in-

terviewed for the purpose of ascertaining their views of the current rental market and the rate of return they feel is reasonable in today's real estate market.

Although other areas of investigation are included in this report, the market data analysis is considered to be the most significant since it relates directly to real estate. Rates of return on other forms of investment while indicating some general interest rates do not directly apply since they involve essentially different forms of investment.

In nearly every situation investigated, the total rental is predicated on some form of market value appraisal to which has been applied a percentage rate to arrive at total annual rent. In some cases, a percentage of gross receipts versus a flat rental is included in the lease to protect the lessor's interest in the event the business enterprise is particularly successful. This is not the normal situation, however, and does not apply to industrial land leases. Further in all cases the data involve non-subordinated leases and range from a minimum term of one year to a maximum of sixty-six years.

In most cases involving long term leases, there is some provision in the lease for increases in the rental based on consumer or wholesale price indices, a reevaluation of the fair rental or escalating rentals over the term of the lease. This in effect insures the lessor that over a given period of time, he will receive a fair return on the value of the land leased and that he will be protected against inflation.

In some cases, particularly those involving Cal-Trans, the lease rate is lower during the initial years of the lease so that improvements made by the lessee which will eventually revert to the lessor can be amortized during the early stages of the lease. The net effect of this is that the rate of return received during the initial years of the lease are at a lower rate than those being received during the latter period of the lease. The overall attempt by Cal-Trans in these situations is, however, to receive an annual rate of 8% or better on the market value of the land leased. In

addition, many of the Cal-Trans leases involve land under freeways on which the state is trying to promote leases. Consequently, they are prone to offer attractive leases to attract others to lease land under freeways.

The public agencies from which data was secured include:

Cal-Trans (State of California)
City of Hayward Airport District
City of Richmond Port District
San Francisco Port Commission
Oakland Port Commission
San Diego Unified Port District
City of Los Angeles, Harbor District
City of San Diego
Major corporations investigated were:
Southern Pacific Transportation Company
Western Pacific Railroad
Standard Oil Company of California

Nearly all of the current market data secured was from the various public agencies. The primary reason for this is that these agencies are continually involved in the leasing of lands under their jurisdiction. The Southern Pacific Transportation Company and Western Pacific Railroad who own considerable property made limited market data available but were particularly helpful with regard to discussions of applicable rates of return that their companies require. Both Southern Pacific and Western Pacific Railroad are subject to real property taxes as established by the State Board of Equalization. Their total rental rate includes taxes. To arrive at the net rental, it is necessary to deduct the tax rate from the gross rental rate. Essentially, the taxes amount to 2½% to 3% of gross rental rate and both companies are trying to secure a net rate of return somewhere between 8% and 9% on leased lands. To achieve this, they must charge a gross rate of between 11% and 12%.

Standard Oil Company of California was also contacted and indicated that they are not currently leasing any of

their property at what would be considered a fair rental rate in today's market. Their policy is to dispose of the property by sale rather than retain the land and lease it. However, the Standard Oil representative did indicate that if they were to lease industrial or commercial property, they would require a minimum of 8% return on the fair market value of the land.

Almost without exception, the various agencies and companies are attempting to secure a rate at or near 8% of the fair market value of the land which, in their opinion, is a current fair rental rate. They did indicate that they felt that rates of return might increase over the next few years but this depends to some extent on inflation and rates of return being secured from alternative type investments.

In all instances in which a public agency was involved, the total rental was predicated on a rate of return applied against the estimated fair market value of the land based usually on formal written appraisals or occasionally opinions of the individuals involved in the leasing program.

The two railroads, however, use a somewhat different approach. Western Pacific in those instances where a portion of the operating right-of-way is leased, such as a lease to Standard Oil for pipeline use, predicate the value of the land on the State Board of Equalization's assessed valuation. Southern Pacific, on the other hand, leases land within their right-of-way on the basis of the cost of buying a substitute strip of land which would include in addition to the value of the raw land the cost of improvements within the right-of-way area and all other costs associated with acquisition. This was the basis of the value of the land that was leased to P. G. & E. for their Antioch to Concord pipeline. Nevertheless, both companies are attempting to secure 8% or more on an established land value.

The following is a tabulation of the market data considered reasonably relevant. More detailed data sheets are included in the Addenda of this report.

Lease No.	Lessor / Lessee	Lease Date	Term	Options	Land Value	Rent	Lease Rate
1	City of Richmond Canal Ind. Park	12/74	5 Yr	1-10 Yr	$ 410,000.	$ 32,796/ Yr Net	8%
2	City of Richmond Dorward Terminal Co.	8/73	20 Yr	None	365,000.	30,000/ Yr Net	8.2%
3	City of Richmond Pacific Molassis Co.	2/73	20 Yr	None	365,000.	30,000/ Yr Net	8.2%
4	City of Hayward Rinker Dev.	Lease Pending	50 Yr	None	735,000.	58,800/ Yr Net	8%
5	City of Hayward Richard Jeho	5/72	50 Yr	None	360,000.	21,600/ Yr Net	6%
6	City of Hayward Air Plaza West Inc.	11/71	50 Yr	None	104,640.	8,371/ Yr Net	8%
7	Cal-Trans, S.F. Mexican Imports	11/74	25 Yr	5-5 Yr	131,000.	10,200/ Yr Net	7.8%
8	Cal-Trans, S.F. Richard Summers	10/75	15 Yr	3-5 Yr	120,000.	9,600/ Yr Net	8%
9	Cal-Trans, S.F. Mariner Square	4/74	5 Yr	35 Yr	45,000.	3,300/ Yr Net	7.3%
10	Cal-Trans, S.F. W.B. Brodovsky	4/75	10 Yr	5-5 Yr	1[illegible],000.	9,000/ Yr Net	7.5%

Lease No.	Lessor / Lessee	Lease Date	Term	Options	Land Value	Rent	Lease Rate
11	Cal-Trans, S.F. Sisters of Providence	2/75	5 Yr	3-5 Yr	$ 115,950.	$ 9,240/ Yr Net	8%
12	Cal-Trans, Sacramento The Shed	3/74	10 Yr	3-5 Yr	136,750.	12,600/ Yr Net	9.2%
13	S.F. Port Comm Geo Burger	3/74	66 Yr	None	1,125,000.	86,940/ Yr Net	7.7%
14	S.F. Port Comm Francisco Bay Off. Park	6/74	66 Yr	None	1,882,000.	168,316/ Yr Net	8.9%
15	S.F. Port Comm Gerson Baker	11/72	66 Yr	None	704,500.	56,400/ Yr Net	8%
16	City of Oakland United Parcel Post	6/73	66 Yr	None	1,625,000.	120,000/ Yr Net	7.4%
17	City of Oakland David Robbins	12/74	25 Yr	2-10 Yr	120,000.	9,600/ Yr Net	8%
18	City of Oakland Continental Restaurant	4/73	15 Yr	2-5 Yr	147,500.	86,940/ Yr Net	8%
19	City of Oakland Oakland Village Corp.	8/72	35 Yr	2-10 Yr	460,000.	36,684/ Yr Net	8%
20	San. Diego Port Dixieline Lumber	8/74	1 Yr	None	288,957.	22,704/ Yr Net	7.9%

Lease No.	Lessor / Lessee	Lease Date	Term	Options	Land Value	Rent	Lease Rate
21	San Diego Port Shelter Island	12/74	1 Yr	None	$ 206,929.	$ 16,560/ Yr Net	8%
22	San Diego Port National Steel	5/74	1 Yr	None	951,787.	75,583/ Yr Net	7.9%
23	L.A. Port District General Amer. Trans.	1/74	5 Yr	None	453,334.	36,267/ Yr Net	8%
24	L.A. Port District Proctor and Gamble	10/74	5 Yr	None	453,595.	34,688/ Yr Net	7.6%
25	City of San Diego James R. Simpson	/75	55 Yr	None	1,090,000.	76,430/ Yr Net	7%
26	San Diego Port Dist. Elliott Pohl	12/74	1 Yr	None	206,929.	16,560/ Yr Net	8%
27	Cal-Trans, S.F. City of Oakland	10/74	5 Yr	2-5 Yr	440,000.	34,200/ Yr Net	7.8%
28	S.P. Trans. Co. P.G. & E.	9/74	20 Yr	1-5 Yr	833,333.	100,000/ Gross	12% Gross 9% Net
29	W.P. R.R. Standard Oil	1/75	20 Yr				12% Gross 9% Net

In summary, the lease data reveals a range between 6% and 9% as the fair rate of return for the properties leased but with the vast majority of leases being at or near 8%. Of even greater interest, however, was the opinion of the various management people interviewed. Almost all indicated that the reasonable rate of return for land leased is currently 8%. The reason for the variances in the annual rates being received are due to various factors some of which include the lease date or an attempt to give the lessee a lower rental during the first few years of the lease to allow him to recoup investment in improvements that will revert to the lessor at the end of the lease period.

The conclusion drawn from this data, therefore, is that the fair rate of return to be applied to the market value of the property is 8%.

RATES OF RETURN BEING RECEIVED ON Aaa BONDS

A review of rates of return being secured on Aaa Bonds indicate that interest rates being secured from these bonds depend on the remaining time period the bond has to maturity. As an example, American Telephone and Telegraph Company bonds maturing in the year 2005 are currently yielding an 8.6% return while G.M.A.C. Acceptance Corporation bonds maturing in 1980 also rated Aaa are only returning 5.8%. The difference in rate is primarily the result of the investing public's attempt to protect themselves against inflation. On long term bonds, the investor is obviously trying to compensate for economic factors affecting the economy. The shorter the period to maturity the less the risk of inflation.

Long term Aaa bonds have a specified reversionary interest at the end of the bond term (the face value of the bonds) and are tied to a specific interest rate (depending on the amount paid for the bond) during the term of the bond. Since these bonds are considered to have a low risk

rate, they tend to reflect an interest rate that is primarily a composite of a rate of return on money plus an anticipated annual inflation rate.

There is a good deal of scholarly support for the view that the "real" interest rate ordinarily hovers around 3% (That is a rate that is risk free and inflation and/or deflation free.) and that anything much higher reflects a premium for inflation and risk. Under this premise a long term high grade corporate bond yielding a 9% rate of return would reflect an inflationary rate of somewhere between 5% and 6%. Studies at the University of Chicago involving common stocks also tend to support this view. In this case, the risk rate is a major factor along with an inflation rate and the "real" interest rate. These studies considered the total return to be composed of dividend and enhancement in value over varying investment time periods. They conclude that the risk rate amounts to approximately 5% with a "real" rate of return at 3% and anything received above the summation of these two rates reflected in the inflationary factor.

Most land leases on the other hand are not subject to significant inflationary pressures since there are usually provisions in the lease for adjusting the rental rate periodically to reflect both inflationary factors and in many cases increase in basic land values.

Because of the difficulty in estimating the investment risk of a land lease, the risk factor is an important ingredient in the rate of return being received. At rates of return amounting to 8%, the risk rate, assuming "real" interest to be 3%, would probably range between 3½% and 4%. The difference being attributable to inflationary considerations.

Thus the composition of the rate of return being received on Aaa bonds and on real estate land leases is different and

while the rates may be in the same general range, they could conceivably vary considerably depending on economic factors in the money market.

Factors reflecting differences in the two types of investments, Aaa bonds and land leases are:

1. With the purchase of a bond, the reversionary value is known since it amounts to the face value of the bond. In a real estate land lease, the reversionary value is unknown and is affected by a number of factors including value trends, location factors, governmental influences etc. For these reasons, there is a possibility of either an increase or decrease in value of real estate at the time the lease reverts to the owners. (A reversionary interest being the value of the land at the end of the lease period.)

2. Rates of return being secured on Aaa bonds can be significantly effected by the short term money market. During periods when short-term government securities and certificates of deposit are yielding between 9% and 10% as they have over the past year, interest rates on bonds are forced upward because of the competitive influence for money. The rates of return being received on real estate land lease are only minimally effected by short-term gyrations in the money market and relate more directly to long term trends of return. As indicated in the market data analyzed elsewhere in this report, land lease rates have only increased a small amount over the past 3 years. Bond rates, on the other hand, have increased much more significantly and short term rates in the money market have fluctuated fantastically.

3. During periods of tight money or while interest rates are increasing, the market value of the bond will vary accordingly. A bond yielding a 6% return on a face value of $1,000 can be sold for more than $1,000 if

interest rates in the money market are below 6% and will fall if the interest rate rises above 6%. (Assuming the bond has 20 or more years before maturity.) The value of real estate and the rates of return being received on real estate investments are not as significantly effected by the money market. Also it is much easier to ascertain the risk factor of a bond as compared to a real estate land lease. The risk factor in bonds is rated by such investment services as Moodys, Standard and Poors, both of which are readily available to the public. Real estate, on the other hand, is not rated by any investor service and the quality of the investment is not generally well established. This is true even if the lessee is a highly rated major corporation since the ultimate value of the reversion of the fee interest to the land owner is in doubt as long as there is a significant period before the lease terminates.

In summary, long term bond interest rates which reflect both capital demands and expectations about inflation have varied significantly over the past few years. Long term bond rates are also influenced to some extent by trends in the short term money market and by actions taken by the Federal Reserve Board. Land leases, on the other hand, do not fluctuate significantly in the short term and are only minimally affected by the short term money market. Also, bonds have an ascertainable reversionary value and after purchase are tied to a specific rate of return. Land leases, on the other hand, have an unknown reversionary value which is dictated by real estate values at the end of the lease, and in most cases land leases have provision for adjustment in the rental being received at various times by having escalator clauses and/or other provisions for adjustment in the total rent being paid.

Predicated on the basic differences between the two types of investments and because there is adequate market data reflecting land lease rates, it is recommended that rental

rates of return not be tied or compared to long term bond interest rates.

PERCENTAGE RENTAL RATES ON MARINA PROPERTIES

A review of market data involving marinas at various lakes in the state indicates that rental rates are typically predicated on a percentage of gross sales. These rental rates are nearly always established by a bidding process subject to a review of the bids by the agencies awarding the lease. In some instances, the lessee pays a rather low rate during the first few years of the lease term to allow him to recover the cost of improvements that must be made at his expense. In these leases the improvements revert to the lessor at the end of the lease period and sometimes reflect a significant value.

The following is a summary of various land leases administered by public agencies for marinas at various reservoirs.

Lease No. / Location	Lessor / Lessee	Lease Date	Term of Lease	Minimum Rent	Percentage Rent on Gross Sales	Petroleum Product
A Folsom Lake	State of Cal. Christensen	1/68	15 Yrs	$150/Mo	2% 1st $100,000. 4% 2nd $100,000.	$.01/Gal
B Lake Elsinor	State of Cal. Elsinor Rec. Area Inc.	8/70	25 Yrs	None	1% 1st $100,000. 2% 2nd $100,000. 3% Over $200,000.	None Special
C Lake Oroville	State of Cal. So. Cal. Financial	12/69	40 Yrs	None	3% 1st $500,000. 4% Next $1,000,000. 5% $1,500,000. Above	None Special
D Lake Millerton	State of Cal. Christensen	5/66	15 Yrs	$1,800 Minimum	7.5% of Gross	None Special
E Morrow Bay	State of Cal. H. Pludow	6/66	15 Yrs	$1,200/Yr	10% 1st $3,500. 13% Over $35,000.	$.015/Gal
F McClure Lake	Merced Irrig. District Usona Rec. Corp	1969	15 Yrs	None	4% of Gross	None Special
G McClure Lake	Merced Irrig. District Swickards Marina	1969	15 Yrs	None	4% of Gross	None Special
H McClure Lake	Merced Irrig. District E. B. Tuttle	1969	15 Yrs	None	4% of Gross	None Special
I McClure Lake	Merced Irrig. District McClure Point Marina	1/75	20 Yrs	None	4% of Gross	None Special

These leases involve property that is somewhat different than the typical marina situation in the Sacramento and San Joaquin River Delta in that:

1. They usually involve an entire marina site and not just a portion of the property.

2. Element of damage from tides, currents and floating debris is not as significant a problem as it is along rivers and sloughs.

3. There are very few "Mom and Pop" operations at these lake marinas as compared to marinas in the Sacramento and San Joaquin Delta.

Some adjustment to the rates indicated by the market data, therefore, must be made if they are to be applied to Sacramento and San Joaquin River marinas.

The small "Mom and Pop" marinas that generate limited gross sales should undoubtedly be separated from the large marinas that do a high volume of business. These small marinas should probably have a standard minimum rental depending on the amount of land involved and the facilities actually within the area of land under state ownership.

One method of establishing a fair rental for a small operation would be to estimate the average value per acre of land occupied by a marina based on the full cash value of the land established by the County Assessor's office and apply to this a rental rate of 8% (as indicated by current land leases). Only those parcels containing less than a half acre or where there are very limited facilities within state ownership would fall into this rental category. Under this approach a half acre of land under the jurisdiction of State Lands having a value of $15,000 per acre as indicated by the Assessor's records would yield a rental at 8% or $600 per year or $50 per month.

Larger marinas with extensive facilities occupying significant areas of state owned land should be assessed a

rental on the basis of the volume of retail sales at a rate of 3% for those facilities actually within the area owned by the state plus a one cent to one and one-half cent per gallon rate on petroleum sales.

This rate, however, should be adjusted downward to a 1½% to 2½% rental if there is a history of significant damage caused by floating debris, currents, tides, or filling of land by sand and mud.

Another method of handling damage problems would be to provide $1,000 annual damage deductible and damage amounts over the $1,000 would then be deducted from the rent to be paid the state. In this situation the only damages that could be deducted would be from floating debris, filling of the land with mud and silt etc. General wear and tear and damages caused by boats would not be covered nor would damage to facilities not on state land.

An example of this would be a case where a marina was generating $200,000 in gross annual revenue from improvements on state land which suffered damages to docking facilities amounting to $5,000 due to floating debris. Total annual rental would amount to $8,000. The cost of repair would be offset by the $1,000 deductible which would then yield a rent of:

Rental		
$200,000 Gross Sales @ $.04		$8,000.
Damage	$5,000.	
Less Deductable	1,000.	
Amount to Be Deducted		
From Rent		4,000.
Net Rental To State ..		$4,000.

Use of a percentage of gross sales as a means of securing a fair rental would tend to eliminate the following problems:

1. The problem of estimating the market value of the property on a periodic basis.

2. Areas that enjoy better location advantages because of proximity to good fishing areas or other recreational facilities would pay a higher rental since they would have more valuable marina property, while those marinas in inferior locations would pay a lesser rate reflecting the lower value of the marina property.

3. Changes in the characteristics of a marina site due to tides, current changes etc. would be reflected in reduced rentals if significant damages occurred to facilities. In a sense, this would also be reflected in the value of the site.

4. Small "Mom and Pop" type marinas would pay a standard fee that could be easily computed and would not require extensive staff time. Rentals from large marinas could be easily administered with the requirement that they submit a monthly operating statement prepared by an accounting firm indicating gross sales. Damages to facilities, of course, would have to be verified probably by inspection and securing written bids estimating cost of repair. This approach would eliminate the problem of estimating the value of the state owned land and its value contribution to the total marina property.

In those cases where it would not be possible to separate the income attributable to the state land, a fair market value appraisal could be made and a rate of 8% of appraised value applied as the fair rental value of the land. (The 8% rate is the rate of return currently being secured from land leases.)

The last approach (a rate of return applied to a fair market value appraisal) which is the typical method used to determine a fair rental rate would seem to be the most costly and difficult to administer because of the requirement

of periodic reappraisals and the problem of estimating the value contribution of the state owned land to the value of the whole marina.

While the percentage of gross sales approach to establishing a fair rent would also pose some problems, they do not appear to be as difficult as the other approach. The Parks and Recreation Department has had good success using this approach to establish a fair rental.

Under any circumstance, it would seem advisable to separate the small "Mom and Pop" marina operation from the large highly developed marinas for purposes of establishing a fair rent. Use of assessor information would seem to be the simplest and least costly means of determining a fair rent.

CORRELATION AND RECOMMENDATIONS

Investigation of current market data involving land leases reveals that there is numerous data available and that rates of return fall into a relatively narrow range. The current rate of return being secured on land leases is or near 8% predicated on the fair market value of the property. Because there is adequate market data available, it is recommended that land leases involving industrial or commercial property be based on a market value appraisal with an 8% rate of return being applied to establish the annual rent.

A study and analysis of the similarities and differences between the return on Aaa bonds and on land leases indicates that although the interest rate on bonds and the rate of return on land leases at present are generally similar, there is good deal of difference in the composition of the rates. For this reason and since there is adequate market data, it is recommended that bond interest rates not be used as criteria for establishing rental rates.

A review of data relating to marina leases by the State of California Department of Parks and Recreation and Merced Irrigation District suggests that consideration be given to establishing marina rentals based on gross sales. While this approach poses some problem with respect to Sacramento-San Joaquin River Delta marinas, it is quite possible this method can be applied to the large marina facilities. Annual rentals on small "Mom and Pop" marinas, however, are probably better established by utilizing county assessor full cash value estimates and applying to this a fair rate of return as indicated by analysis of land leases (other than marina leases). Some further study to determine how this procedure could be implemented is undoubtedly required, and it will probably be necessary to inspect each marina in the field to determine the best method of estimating a final fair rental.

If it is not feasible to apply a rental based on a percent of gross annual sales in the case of larger marinas or use of value information from county assessor offices for small marinas, the traditional method of estimating rental rates on leased lands can be applied (rate of return on appraised value). This approach to marina rentals, however, would seem to be the least equitable and desirable to the marina operators and State and incur the greatest cost. In some cases it is possible that the cost of establishing the lease rate would be greater than the rent received over the near term of the lease.

Rates of return should be reviewed on a two to four year basis. This could be done by contacting various public agencies as well as private companies to ascertain their opinions and approaches to estimating fair land rents. If it is obvious that significant market changes are taking place, a complete market survey of data should be conducted. Under any circumstance, it is recommended that leases provide a review of land rentals on a periodic basis

such as every five years with rents tied either to some governmental index, or in the case of highly valuable properties producing large incomes, a reappraisal of the land and a reanalysis of rates of return being secured. (This applies particularly to commercial and industrial property.) In the case of marinas, it is suggested that a corporative working relationship be developed with parks and recreation for the purpose of monitoring current marina rentals and establishing means of administering marina leases.

ADDENDA

Urban Property Division Professional Staff

Thomas W. Clark, Jr., is a Vice-President of Urban Property Research Company in the Sacramento office. He is involved in appraisals and market studies involving a wide variety of property including commercial, industrial, multi-family residential, and rural-recreation lands. Mr. Clark has been involved with real estate studies and valuation, since 1957.

Mr. Clark's most recent association prior to joining Urban Property Research Company was as Vice-President and Sacramento manager for another appraisal firm. He has also been employed by the State of California as a Senior Appraiser with the California Department of General Services and with the State Reclamation Board. Mr. Clark was Chief of the appraisal section for the Reclamation Board and was responsible for the appraisal of a number of major flood control projects including the lower San Joaquin Valley Flood Control Project which involved a major by-pass plan and the appraisal of numerous large land holdings. He was also responsible for valuation studies and the effects of partial takings on various other flood control projects. At the Department of General Services, Mr. Clark was in charge of urban appraisals for Northern California including the appraisal of property for the State Capitol Master Plan, office buildings in the San Francisco Civic Center area and appraisals of land surrounding San Jose State and Chico State Colleges. Mr. Clark also acted in the capacity of a review appraiser and expert valuation witness for both the Department of General Services and Reclamation Board.

Mr. Clark has appraised properties throughout the State of California and in the Seattle-Bellview area of Washington. He has been primarily active; however, in the Sacramento and San Joaquin Valleys, San Francisco Bay Area,

Lake Tahoe Basin, and the foothill area of the Sierra Nevada Mountains.

Mr. Clark is a graduate of Sacramento State College where he majored in Business Administration with a minor in Economics. He also did graduate work in the area of Economics at Sacramento State College.

Mr. Clark is an M.A.I. (member of the American Institute of Real Estate Appraisers) and a charter member of Chapter 27 of the American Right of Way Association. He has served on various committees for the American Institute of Real Estate Appraisers and has held various elective offices in Chapter 27 of the American Right of Way Association, including Vice-President, President, and National Director.

Mr. Clark has been chairman of a number of seminars involving valuation problems and has also served as a moderator and speaker.

Mr. Clark has qualified as expert valuation witness in federal court and in the superior court in the counties of Fresno, Stanislaus, San Joaquin, Sacramento, Sutter, Colusa, Butte, and Tehama.

LAND LEASE NO. 1

Lessor: City of Richmond: Port District

Lessee: Canal Industrial Park

Property Location: Canal Boulevard (adjacent to Union Oil Terminal), Richmond

Type of Property: Industrial

Size of Property: 8.2 Acres

Terms of Lease:

Date Negotiated

Lease Date: Start: 12-1-74 End: 11-30-79 No Years: 5

Options: On a 10 Year Renewal

Special Clauses: Contract rent to be adjusted annually by the average of the consumer and wholesale price index.

Valuation Basis: $410,000. (1.15/S.F.)

Contract Rent: $2,733/Month Net

Net Lease Rate: 8%

Remarks: Lessee is in import car business.

LAND LEASE NO. 2

Lessor: City of Richmond: Port District

Lessee: Dorward Terminal Company

Property Location: In Terminal #4, Point San Pablo Area, Richmond

Type of Property: Industrial

Size of Property: 6 Acres

Terms of Lease:

Date Negotiated 8/73

Lease Date: Start: 2/1/73 End: 1/31/93 No. Years: 20

Options: None

Special Clauses: Contract rent to be adjusted annually by consumer price index.

Valuation Basis: $365,000. ($1.40/S.F.)

Contract Rent: $30,000/Year Net

Net Lease Rate: 8.2%

Remarks: Lessee is in petro chemicals and vegetable oil business.

Lessee owns leasehold warehouse improvements.

LAND LEASE NO. 3

Lessor: City of Richmond: Port District

Lessee: Pacific Molassis Company

Property Location: In Terminal #4, Point San Pablo Area, Richmond

Type of Property: Industrial

Size of Property: 6 Acres

Terms of Lease:

Date Negotiated

Lease Date: Start: 2/1/73 End: 1/31/93 No. Years: 20

Options: None

Special Clauses: Contract rent to be adjusted annually by consumer price index.

Valuation Basis: $365,000.

Contract Rent: $30,000/Year

Net Lease Rate: 8.2%

Remarks: Lessee is in petro chemical business.

Lessee owns leasehold warehouse improvements.

LAND LEASE NO. 4

Lessor: City of Hayward: Airport District

Lessee: Rinker Development Corporation

Property Location: Northwest Corner Hesperian Boulevard and Sneirro Street, Hayward

Type of Property: Commercial

Size of Property: 420,000 S.F. (9.64 Acres)

Terms of Lease:

Date Negotiated: Optioned April, 1974 (still pending)

Lease Date: Start: End: No. Years: 50

Options: None

Special Clauses: Contract rent on 10% of lessee rental receipts from tenants, whichever is greater. To be adjusted at 25, 35, and 45 years to 8% of then market value.

Valuation Basis: $735,000. ($1.75/S.F.)

Contract Rent: $58,800/Yr. (payable $4,900/Month Net)

Net Lease Rate: 8%

Remarks:

LAND LEASE NO. 5

Lessor: City of Hayward

Lessee: Richard Jeho, Wm. F. Kartazian, Stanley Sperling

Property Location: Southwest Corner, Hesperian Boulevard and Golf Course Road, Hayward

Type of Property: Commercial

Size of Property: 130,666 S.F.

Terms of Lease:

Date Negotiated

Lease Date: Start: 5/1/72 End: 5/1/2022 No. Years: 50 Yrs.

Options: None

Special Clauses: $1,800/Month Net to 12/31/97. Adjustment to rent 1/98, 1/08, 1/18 at ½% per month of agreed market value of property.

Valuation Basis: $360,000.

Contract Rent: $21,600/Yr.

Net Lease Rate: 6%

Remarks:

LAND LEASE NO. 6

Lessor: City of Hayward

Lessee: Air Plaza West Inc.

Property Location: Southwest Side of Hesperian Boulevard, 300 Feet Southeast of Skywest Drive, Hayward

Type of Property: Commercial

Size of Property: 52,320 S.F.

Terms of Lease:

Date Negotiated

Lease Date: Start: 8/1/70 End: 8/1/2020 No. Years: 20 Yrs.

Options: None

Special Clauses: Prepayment of lease allowed at 8% annual discount of lease payment

Valuation Basis: $104,640.

Contract Rent: $6,276/Yr Net
Net Lease Rate: 6%

Remarks:

LAND LEASE NO. 7

Lessor: State of California: Department of Transportation

Lessee: Mexican Imports, Inc.

Property Location: Between 1st and 2nd Streets, below Freeway 280 in San Jose

Type of Property: Commercial

Size of Property: 65,580 S.F.

Terms of Lease:

Date Negotiated 11/25/74 (pending)
Lease Date: Plan To Start: Mr. or End: Apr. 1975 No. Years: 25
Options: Five-5 Year Renewal Options
Special Clauses:
Valuation Basis: $131,000. ($2/S.F.)
Contract Rent: $850/Mo. Net ($10,200/Yr)
Net Lease Rate: 7.8%

Remarks: To be used for sale of food, beverage, curios and parking.

LAND LEASE NO. 8

Lessor: State of California: Department of Transportation

Lessee: Richard C. Summers

Property Location: Below Freeway 280, Between 10th and 11th Streets in San Jose

Type of Property: Commercial

Size of Property: 37,610 S.F.

Terms of Lease:

Date Negotiated 9/18/73
Lease Date: To Start: 10/1/75 End: 9/30/90 No. Years: 15
Options: Three-5 Year Renewal Options

Special Clauses:
Valuation Basis: $120,000. ($3.19/S.F.)
Contract Rent: $9,600/Yr; ($8/Mo Net)
Net Lease Rate: 8%

Remarks: Gas station and car wash under construction

LAND LEASE NO. 9

Lessor: State of California: Department of Transportation

Lessee: Mariner Square, A California Corporation

Property Location: North Side of Webster Street and Oakland Inner Harbor Estuary, Alameda

Type of Property: Industrial

Size of Property: 53,725 S.F.

Terms of Lease:
Date Negotiated 9/12/73
Lease Date: Start: 4/1/74 End: 3/31/70 No. Years: 5
Options: Three-5 Year Renewal Options
Special Clauses:
Valuation Basis $45,000. (.84/S.F.)
Contract Rent: $3,300/Yr Net ($275/Mo)
Net Lease Rate: 7.3%

Remarks: Serves as parking lot

LAND LEASE NO. 10

Lessor: State of California: Department of Transportation

Lessee: W.B. Brodovsky, A.C. Gravution, and R.A. Garhardt

Property Location: Below Freeway 580, Between Fruitvale and Flagg Streets, Oakland

Type of Property: Commercial (to be car wash and gas station)

Size of Property: 21,936 S.F.

Terms of Lease:
Date Negotiated 9/7/73

Lease Date: Start: 4/1/75 End: 3/31/85 No. Years: 10 Yrs.

Options: Five-5 year renewal options

Special Clauses: Contract rent or plus ½¢/gallon of sales over 100,000 gallons

Valuation Basis: $120,000. ($5.47/S.F.)

Contract Rent: $9,000/Yr Net ($750/Mo)

Net Lease Rate: 7.5%

Remarks: Rent to be adjusted: 4/1/85—$900/Mo
4/1/90—$950/Mo
4/1/2000—$1,000/Mo

LAND LEASE NO. 11

Lessor: State of California: Department of Transportation

Lessee: The Sisters of Providence in California

Property Location: Bounded by Sycamore, Northgate and 27th Streets, Oakland (Under Freeway)

Type of Property: Commercial (Serves as Parking Lot)

Size of Property: 91,000 S.F.

Terms of Lease:

Date Negotiated 11/19/74

Lease Date: Start: 2/1/75 End: 1/31/80 No. Years: 5 Years

Options: Three-5 Year Renewal Options

Special Clauses:

Valuation Basis: $115,950. ($1.27/S.F.)

Contract Rent: $9,240/Yr Net ($770/Mo Net)

Net Lease Rate: 8%

Remarks:

LAND LEASE NO. 12

Lessor: State of California: Department of Transportation

Lessee: The Shed

Property Location: Between 29th and 30th Streets and P and Q Streets, Sacramento

Type of Property: Commercial Land

Size of Property: 108,759 Square Feet

Terms of Lease:

Date Negotiated

Lease Date: Start: 3/29/74 End: 3/29/84 No. Years: 10

Options: Three-5 Year Options

Special Clauses: Rent to be adjusted annually according to Consumer Price Index.

Valuation Basis: $136,750.

Contract Rent: 1st Year—$250/Mo, 2nd and 3rd Years —$500/Mo, 4th Year—$750/Mo., 5 through 10 Years—$1,050/Mo

Net Lease Rate: 9% on last 5 year rental rate

Remarks: Lower rent during early years of lease to allow lessee to recover improvement costs.

LAND LEASE NO. 13

Lessor: City and County of San Francisco: S.F. Port Commission

Lessee: George L. Burger

Property Location: Seawall Lot 322, Area Bounded by Vallejo Green, Front and Davis Streets, San Francisco

Type of Property: Commercial

Size of Property: 70,381 S.F. usable area plus 5,103 S.F. of land in the proposed Maritime Park Project

Terms of Lease:

Date Negotiated

Lease Date: Start: 3/1/74 End: 2/28/2040 No. Years: 66 Yrs

Options: None

Special Clauses: Rental adjustment of (1%/Yr of $14.90/S.F. value) or (ratio percent of contract rent actually received by Port to rent received by lessee

from tenants to gross receipts of lessee) whichever is greater.

Valuation Basis: $1,125,000. ($14.90/S.F.)

Contract Rent: $7,245,Mo Net

Net Lease Rate: 8% of 70, 381 S.F. usable land and 4% of 5,103 S.F. portion burdened by proposed park

Remarks:

LAND LEASE NO. 14

Lessor: City and County of San Francisco; S.F. Port Commission

Lessee: Francisco Bay Office Park

Property Location: Seawall Lots 315, 316 and 317

Type of Property:

Size of Property: 153,357 S.F. (118,478 S.F. usable and 34,879 S.F. in the proposed Maritime Parkway)

Terms of Lease:

Date Negotiated

Lease Date: Start: 6/28/74 End: 6/27/2040

No. Years: 66

Options: None

Special Clauses: Rental adjustments: adjusted each 5 yrs. for 1st 25 yrs by 5% of minimum rental or 6.987% of gross rents received by lessee from tenants, whichever is greater. On the 25th, 35th, 45th, 55th, and 65th year, rental will be 9% of the then appraised value.

Valuation Basis: $1,777,000. ($15/S.F.) for usable area $105,000. ($3/S.F.) for Parkway Land

Contract Rent: See Below

Net Lease Rate: 9.2%

Remarks: Contract Rent is

$1.35/S.F. × 118,478 S.F. usable	$159,945.30
plus $ .24/S.F. × 34,897 S.F. Park Land	$ 8,370.96
Total	$168,316.26 Per Year

LAND LEASE NO. 15

Lessor: San Francisco Port Commission

Lessee: Gerson Bakar

Property Location: Seawall Lot No. 313 (Bounded by Grant St., North Point St., and the Embarcadero

Type of Property: Commercial

Size of Property: 47,277 S.F.

Terms of Lease:

Date Negotiated

Lease Date: Start: 11/14/72 End: 11/13/2038
No. Years: 66

Options: None

Special Clauses: Rental adjustment each 5 years for 1st 25 yrs. to be 5% of original rental or 7.58% of gross rental receipts of developer, whichever is greater. Thereafter the lease will be reviewed at 10 year intervals and adjusted to the then prevailing rate of return on land leases.

Valuation Basis: $14.90/S.F.
$704,500.

Contract Rent: $4,700/Mo Net

Net Lease Rate: 8%

Remarks:

LAND LEASE NO. 16

Lessor: City of Oakland: The Port District

Lessee: United Parcel Service

Property Location: East Side of Parde Drive, North of Hegenberger Rd., Oakland

Type of Property: Industrial Land (Lessee now constructing 180,000 S.F. truck terminal) to be No. Calif. Distribution Center

Size of Property: 25 Acres

Terms of Lease:

Date Negotiated 12/72

Lease Date: Start: 6/1/73 End: 5/31/2039
No. Years: 66
Options: No
Special Clauses: Rental adjustments: See remarks
Valuation Basis: $1,625,000. ($65,000/Acre)
Contract Rent: $10,000/Mo Net (1st 10 Yrs)
Net Lease Rate: 7.4%

Remarks: 10 year rental adjustments to bring contract rent to 8% of then determined fair market value, with the following minimums and maximums.

Period	Minimum	Maximum
11-20 Yrs.	$11,667.	$13,233.
21-30 Yrs.	15,000.	16,667.
31-40 Yrs.	18,333.	20,000.

41 on—no minimum or maximum, 8% of F.M.V.

LAND LEASE NO. 17

Lessor: City of Oakland: Port District
Lessee: David G. Robins
Property Location: S.E. ½ of block bounded by Jefferson St., Clay St., 1st St., and 2nd St., Oakland
Type of Property: Commercial land (constructing facility for Cost Plus Imports)
Size of Property: 30,000 S.F.
Terms of Lease:
Date Negotiated 12/74
Lease Date: Start: Completion of Const. 8/75 End: 2000
No. Years: 25
Options: Two 10-Year Options
Special Clauses: Contract rent adjusted every 3 yrs—by S.F. and Oakland Consumer Price Index
Valuation Basis: $120,000 ($4/S.F.)
Contract Rent: $8/Mo Net (Base)*

*Initial contract rent is to be adjusted upward by 8% of City's costs to make this deal. (R.E. Commission, attorneys fees, etc.)

Lessor: Has 1st right of refusal on purchase of leasehold interest

Net Lease Rate: 8%

Remarks: The lessee (developer) owns the other ½ of the block

LAND LEASE NO. 18

Lessor: City of Oakland: Port District

Lessee: Continental Restaurant Systems, a Subsidiary of Ralston Purina

Property Location: 1211 Embarcadero, Oakland

Type of Property: Commercial land (Barclay Jack's Restaurant has since been constructed.)

Size of Property: 53,685 S.F. (1.23 Acre)

Terms of Lease:

Date Negotiated 4/73 (rent to start upon completion of construction)

Lease Date: Start: 5/24/74 End: 9/30/88

No. Years: 15

Rent Started upon completion of const. 5/24/74

Options: Two 5-Year Options

Special Clauses: Rental payments to be adjusted every 5 years. To be based upon the market value and prevailing rate of return then in effect.

Valuation Basis: $147,500 ($2.75/S.F.)

Contract Rent: $1,000/Mo Net

Net Lease Rate: 8.1%

Remarks: Percentage rent clause: 3½% of gross sales as it exceeds $1,000/Month contract rent. Gross sales are now approaching $1,000,000/Year.

LAND LEASE NO. 19

Lessor: City of Oakland: Port District

Lessee: Oakland Village Corporation: Subsidiary of Specialty Restaurants Corporation

Property Location: Foot of Alice Street, Oakland

Type of Property: Commercial Land

Size of Property: 101,910 S.F. (2.34 Acres)

Terms of Lease:

Date Negotiated

Lease Date: Start: 8/16/72 End: 8/15/2007

No. Years: 35

Options: Two-10 Year Options

Special Clauses: Rental adjustments are to be made at 5 year intervals: to be based upon the then market value and the then prevailing rate of return, not to be less than 8%

Valuation Basis: $460,000. ($.50/S.F.)

Contract Rent: $3,057/Month Net

Net Lease Rate: 8%

Remarks: Development will have two restaurants and 40 specialty shops (under construction) Percentage rental to be paid as it exceeds the contract
rent: 3% of gross sales from food and beverage; 15% of all sublease rentals or specialty shops.

LAND LEASE NO. 20

Lessor: San Diego Unified Port District

Lessee: Dixieline Lumber Company

Property Location: 32nd Street and Tidelands, National City

Type of Property: Industrial

Size of Property: 206,398 S.F.

Terms of Lease:

Date Negotiated

Lease Date: Start: 8/1/74 End: 8/1/75

No. Years: 1 Yr

Options: None

Special Clauses:

Valuation Basis: $288,957.

Contract Rent: $22,704/Yr Net

Net Lease Rate: 7.9%

Remarks:

LAND LEASE NO. 21

Lessor: San Diego Unified Port District

Lessee: Elliott W. Pohl D.B.A. San Diego Marine Exchange

Property Location: Shelter Island

Type of Property: Commercial

Size of Property: 20,255 Sq. Ft. Land,
8,758 Sq. Ft. Water

Terms of Lease:

Date Negotiated

Lease Date: Start: 12/1/74 End: 12/1/75
No. Years: 1

Options: None

Special Clauses:

Valuation Basis: $206,929.

Contract Rent: $16,560/Yr Net

Net Lease Rate: 8%

Remarks:

LAND LEASE NO. 22

Lessor: San Diego Unified Port District

Lessee: National Steel and Ship Building Co.

Property Location: Belt and Schley Streets, San Diego

Type of Property: Industrial

Size of Property: 559,875 S.F. Land
213,680 S.F. Water

Terms of Lease:

Date Negotiated

Lease Date: Start: 5/1/74 End: 5/1/79 No. Years: 5

Options: None

Special Clauses: Cost of living adjustment to rent every 2½ years. Every 5 years lease renegotiated at prevailing rates.

Valuation Basis: $971,787.

Contract Rent: $76,142/Yr
Net Lease Rate: 8%

Remarks:

LAND LEASE NO. 23

Lessor: City of L.A.; Harbor District

Lessee: General America Transportation Corp.

Property Location: Outer Harbor Boulevard, San Pedro

Type of Property: Industrial-Storage

Size of Property: 226,667 S.F.

Terms of Lease:
Date Negotiated
Lease Date: Start: 1/74 End: 1/79 No. Years: 5 Yrs.
Options: None
Special Clauses:
Valuation Basis: $453,334. ($2/S.F.)
Contract Rent: $36,267/Annual
Net Lease Rate: 8%

Remarks:

LAND LEASE NO. 24

Lessor: City of L.A.: Harbor District

Lessee: Proctor and Gamble Manufacturing Co.

Property Location: Between old and new Dock Street on Terminal Island, L.A.

Type of Property: Industrial

Size of Property: 192,709 Sq.Ft.

Terms of Lease:
Date Negotiated: 7/74
Lease Date: Start: 10/74 End: 10/79 No. Years: 5
Options: None
Special Clauses:
Valuation Basis: $433,595. ($2.25/S.F.)
Contract Rent: $34,688/Yr
Net Lease Rate: 8%

Remarks:

LAND LEASE NO. 25

Lessor: City of San Diego

Lessee: James R. Simpson

Property Location: Sports Arena Boulevard at Hancock, San Diego

Type of Property: Commercial-Motel, Restaurant, Housing

Size of Property: 11.97 Acres

Terms of Lease:

Date Negotiated 1972

Lease Date: Start: 1975 End: No. Years: 55

Options: None

Special Clauses:

Valuation Basis: \$1,090,000. (\$2.09±/S.F.) vs 2% Food & Bev. 5% Bar 7% Retail Sale 1% Rest over \$1,000,000. 3% of Package

Remarks: Lease to start at end of construction. Percentage vs. Minimum Rent

LAND LEASE NO. 26

Lessor: San Diego Unified Port District

Lessee: Elliott W. Pohl, D.B.A. San Diego Marine Exchange

Property Location: Shelter Island

Type of Property: Commercial

Size of Property: 20,255 S.F. Land 8,758 S.F. Water

Terms of Lease:

Date Negotiated

Lease Date: Start: 12/1/74 End: 12/1/75 No. Years: 1 Yr

Options: None

Special Clauses:

Valuation Basis: \$206,929.

Contract Rent: \$16,560/Yr Net

Net Lease Rate: 8%

Remarks:

LAND LEASE NO. 27

Lessor: State of California: Department of Transportation

Lessee: City of Oakland

Property Location: Land bounded by 5th and 6th Streets, Washington and Jefferson Streets, Oakland

Type of Property: Commercial

Size of Property: 108,832 S.F.

Terms of Lease:

Date Negotiated

Lease Date: Start: 10/1/74 End: 9/30/79 No. Years: 5

Options: Two-5 Year renewal options to be based upon a mutually agreed upon value and rate at that time

Special Clauses:

Valuation Basis: $440,000. ($4.04/S.F.)

Contract Rent: $2,850/Mo Net

Net Lease Rate: 7.8%

Remarks: Being used as a city parking lot

LAND LEASE NO. 28

Lessor: Southern Pacific Transportation Co.

Lessee: Pacific Gas and Electric Co.

Property Location: Southern Pacific Railroad right-of-way between Concord and Pittsburg.

Type of Property: Railroad right-of-way

Size of Property:

Terms of Lease:

Date Negotiated

Lease Date: Start: 9/74 End: 9/99 No. Years: 25

Options: None

Special Clauses:

Valuation Basis: $833,333.

Contract Rent: $100,000/Yr. Gross

Net Lease Rate: 12% Gross 9% Net

Remarks: Southern Pacific must pay taxes estimated at 3% of gross rate. This is lease of a pipeline right-of-way.

LAND LEASE NO. 29

Lessor: Western Pacific Railroad

Lessee: Standard Oil Co.

Property Location: Western Pacific Railroad right-of-way between Montazuma to West Sacramento

Type of Property: Railroad right-of-way

Size of Property: ....

Terms of Lease:

Date Negotiated

Lease Date: Start: 1/75 End: 1/95 No. Years: 20

Options:

Special Clauses:

Valuation Basis: Value based on State Board of Equalization Appraisal

Contract Rent:

Net Lease Rate: 12% Gross 9% Net

Remarks: Western Pacific must pay taxes estimated at 3% of gross rate. This is a lease of a pipe line right-of-way.

LAND LEASE NO. A

Lessor: State of California, Parks and Recreation

Lessee: N. Christensen

Property Location: Folsom Lake

Type of Property: Marina

Size of Property: ....

Terms of Lease:

Date Negotiated

Lease Date: Start: 3/5/70 End: 3/5/90 No. Years: 20 Yrs.

Options: None

Rental Rate: $150, no minimum rental or 2% of gross sales up to $100,000 and 4% of gross sales over $100,000 plus 1¢ per gal on petroleum sales.

Remarks:

LAND LEASE NO. B

Lessor: State of California: Parks and Recreation

Lessee: Lake Elsinore Recreation Area, Inc.

Property Location: Lake Elsinore

Type of Property: Marina and Campground

Size of Property: ......

Terms of Lease:

Date Negotiated

Lease Date: Start: 6/30/70 End: 6/30/95

No. Years: 25

Options: None

Rental Rate: 1% of 1st $100,000 gross sales. 2% 2nd $100,000 gross sales. 4% over $200,000 gross sales plus 1¢ per gallon on petroleum sales.

Remarks:

LAND LEASE NO. C

Lessor: State of California: Parks and Recreation

Lessee: So. California Financial Corp.

Property Location: Lake Oroville

Type of Property: Marina

Size of Property: ......

Terms of Lease:

Date Negotiated

Lease Date: Start: 12/1/69 End: 12/1/2009

No. Years: 40

Options: None

Rental Rate: 3% of first $500,000 gross sales. 4% of gros sales $500,000 to $1,500,000. 5% of gross sales over $1,500,000

Remarks:

LAND LEASE NO. D

Lessor: State of California: Parks and Recreation

Lessee: N. Christensen

Property Location: Millerton Lake

Type of Property: Marina

Size of Property:

Terms of Lease:

Date Negotiated

Lease Date: Start: 5/8/66 End: 5/8/81 No. Years: 15

Options: None

Rental Rate: $150/Mo Minimum of 2% of 1st $100,000 of gross sales. 4% of gross sales over $100,000 and 1¢ per gallon on petroleum sales.

Remarks:

LAND LEASE NO. E

Lessor: State of California: Parks and Recreation

Lessee: H. Pludow

Property Location: Morrow Bay

Type of Property: Marina

Size of Property: ——

Terms of Lease:

Date Negotiated

Lease Date: Start: 6/30/66 End: 6/30/81

No. Years: 15

Options: None

Rental Rate: $1,200/Year. 10% of 1st $35,000 gross sales. 13% over $35,000 gross sales plus 1½¢ per gal on petroleum sales.

Remarks:

LAND LEASE NO. F

Lessor: Merced Irrigation District

Lessee: Usona Recreation Corp.

Property Location: Barrett Cove, Lake McClure

Type of Property: Marina

Size of Property: ——

Terms of Lease:

Date Negotiated

Lease Date: Start: 1969 End: 1984 No. Years: 15

Options: None

Rental Rate: Rent amounts to 4% of gross sales with no minimum. Estimated gross sales are under $100,000.

Remarks:

LAND LEASE NO. G

Lessor: Merced Irrigation District

Lessee: Swickards Marina

Property Location: Barrett Cove, Lake McClure

Type of Property: Marina

Size of Property: 20± Acres

Terms of Lease:

Date Negotiated

Lease Date: Start: 1969 End: 1984 No. Years: 15

Options: None

Rental Rate: Rent is 4% of gross sales with no minimum. Estimated gross sales amount to approximately $100,000/Yr

Remarks:

LAND LEASE NO. H

Lessor: Merced Irrigation District

Lessee: Ed Tuttle

Property Location: Horseshoe Bend, Lake McClure

Type of Property: Marina

Size of Property: ....

Terms of Lease:

Date Negotiated

Lease Date: Start: 1969 End: 1984 No. Years: 15

Options: None

Rental Rate: Rent is 4% of gross sales with no minimum. Estimated gross sales amount to less than $100,000 annually.

Remarks:

LAND LEASE NO. I

Lessor: Merced Irrigation District

Lessee: McClure Point Marina

Property Location: McClure Point, Lake McClure

Type of Property: Marina

Size of Property:

Terms of Lease:

Date Negotiated

Lease Date: Start: 1/75 End: 1/95 No. Years: 20

Options: None

Rental Rate: Rent is 4% of gross sales with no minimum. Estimated gross sales amount to less than $100,000 per year.

Remarks:

STATE LANDS COMMISSION MEMORANDUM DATED AUGUST 1, 1975

To: Jim Fiack

From: State Lands Division

Subject: Throughput Charges

In accordance with our discussion on July 31, 1975, there are enclosed copies of certain documents which may be helpful in your analysis of throughput charges.

Your attention is specifically called to the Texaco documents filed in support of their claim for royalty oil transportation allowance under leases PRC 2206.1 and PRC 2725.1. The itemized schedule includes a charge for an onshore pipeline right-of-way at a rate of 2% of the State's royalty, which is indirectly a throughput charge since the State's royalty is based on lease production. The surface lease document (transmitted with Texaco's letter dated Jan. 29, 1964) would, presumably, justify this charge; however, as indicated in Texaco's letter they have at the request of the Hollister Estate Company deleted the monetary provisions of the lease. Such terms may identify more specific reference to throughput charges.

Also, please note that all of the documents included herein have been submitted with a request that they be treated in a personal and confidential manner.

If you have any questions regarding this matter, please give me a call.

/s/ A. D. WILLARD
Supervising Mineral
Resources Engineer

[Enclosures omitted in printing: three cost sheets and Texaco letter of Jan. 29, 1964]

COST OF TRANSPORTING OIL FROM PLATFORM "HELEN" TO OPERATIONS BASE STATE LEASE PRC 2206.1 (ANITA), SANTA BARBARA COUNTY, CALIFORNIA (ENCLOSED WITH MEMORANDUM OF AUGUST 1, 1975)

Cost of Constructing Oil Pipeline	
13,000′—6″ marine plus 18,730′—2½″ onshore	$218,700
Operating Costs	
Total Anita Operating Costs—Schedule I—$655,100	
Allocated to Oil Transportation—10% of 655,100	65,500
Maintenance & Repairs	
$1,900 per yr × 8 yrs = ...	15,200
Pipeline Easement Rental	
Total Rental = 2% of State's Royalty	
= 550,000 Bbls × 2.70 × 1/6 × 0.02 = $5,000	
70% to Pipeline Easement = .70 × 5,000 = ...	3,500
(30% to Operating Base Rental)	
Taxes	
460 per year × 8 yrs = ...	3,700
Total	$306,000

Cost/Bbl = $306,600 ÷ 550,000 = 55.7¢/Bbl
Estimated Ultimate Recovery = 550,000 Bbls
Estimated Life = 8 years

LEW:DN
8/17/65

COST OF TRANSPORTING OIL FROM PLATFORM "HERMAN" TO OPERATING BASE STATE LEASE PRC 2725.1 (JADE), SANTA BARBARA COUNTY, CALIFORNIA (ENCLOSED WITH MEMORANDUM OF AUGUST 1, 1975)

Cost of Constructing Oil Line	
62,490 ft of 6" Pipeline	$487,100
Operating Costs	
Total Jade Operating Costs—Schedule I—$754,800	
Allocated to Oil Transportation—20% of $754,800	151,100
Maintenance & Repairs	
$2,500 per year × 6 years	15,000
Pipeline Easement Rental	
Total Rental = 2% of State's Royalty	
= 7,725,329 Bbls × $3.00 × .3925 × .02	
= $182,000	
70% to Pipeline Easement = .70 × $182,000	127,400
(30% to Operating Base)	
Taxes	
$1,020 per year × 6 years	6,100
	$786,600

Cost/Bbl = $786,600 ÷ 7,725,329 = 10.2¢/Bbl
Estimated Ultimate Recovery = 7,725,329 Bbls
Estimated Life = 6 years

LEW: DN
8/17/65

LEASE AND MODIFICATION OF LEASE BETWEEN HOLLISTER ESTATE COMPANY AND TEXACO, INC. (ENCLOSED WITH MEMORANDUM OF AUGUST 1, 1975)

Personal & Confidential
Surface Lease

THIS AGREEMENT, dated as of the 1st day of June, 1960, by and between HOLLISTER ESTATE COMPANY, a corporation, hereinafter called "Lessor," and TEXACO Inc., a Delaware corporation, MONTEREY OIL COMPANY, a Delaware corporation, and NEWMONT OIL COMPANY, also a Delaware corporation, hereinafter called "Lessee",

WITNESSETH:

WHEREAS, Lessor is the owner of certain lands adjacent to the Pacific Ocean; located in Santa Barbara County, California, more particularly described in Exhibit "A" attached hereto and made a part hereof, which said lands are hereinafter referred to as the "Hollister Estate Lands;" and

WHEREAS, Lessee is the holder of an oil and gas lease from the State of California dated July 25, 1958, and designated as PRC 2206.1 which covers tide and submerged lands adjacent to said Hollister Estate Lands within the area described in Exhibit "B" attached hereto and made a part hereof, which said area is hereinafter referred to as "Tidelands Area;" and

WHEREAS, Lessee may acquire additional oil and gas leases covering tide and submerged lands within the Tidelands Area;

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) paid by Lessee to Lessor, the receipt of which is hereby acknowledged, and of the covenants hereinafter contained by Lessee to be kept and performed

and subject to the limitations, conditions and provisions hereinafter contained, Lessors do hereby lease unto Lessee as an oil and gas production, treating, storage and transportation center the surface of that certain portion of the Hollister Estate Lands more particularly described in Exhibit "C" attached hereto and made a part hereof, which said lands so leased are hereinafter referred to as the "Operating Base," EXCEPT, HOWEVER, that nothing herein contained shall extend to Lessee any right, title or interest in and to any oil, gas or hydrocarbons or minerals in or under the Hollister Estate Lands nor shall Lessee have any right to drill any oil or gas wells upon the Hollister Estate Lands, whether the same shall be bottomed under the Tidelands Area or otherwise or any rights other than those specifically given herein. Lessor reserves the right to develop or to lease to others the subsurface of the Operating Base for the development of oil and gas and other minerals, together with the right to drill or tunnel under and through such subsurface, subject to the rights of Lessee hereunder, but it shall not permit any entry upon or use of the surface of the Operating Base for such purposes without obtaining the prior written consent of Lessee which such consent shall not be unreasonably withheld or delayed.

THERE IS ALSO GRANTED to Lessee hereby those certain easements and rights of way provided for in paragraphs 2, 3 and 4 hereof onto, over, upon and across, and ingress and egress to and from the Hollister Estate Lands as shall from time to time during the term hereof be necessary or convenient in the use of the Operating Base as an oil and gas production, treating, storage and transportation center.

TO HAVE AND TO HOLD the Operating Base as an oil and gas production, treating, storage and transportation center and the said easements and rights of way for the term of ten (10) years from and after the date hereof and so long thereafter as Lessee, or a Separate Lessee, as de-

fined in paragraph 16 hereof, who shall have exercised the option contained therein, shall hold an oil and gas lease covering tide and submerged lands within the Tidelands Area.

In consideration of the premises, the parties hereto respectively covenant and agree:

1. For the rights granted to it hereby Lessee shall pay to Lessor a sum of money [Omitted in original. See paragraph 3 of Modification of Surface Lease, *infra.*] Lessor agrees to examine promptly each and all statements and remittances forwarded by Lessee to it hereunder and promptly advise Lessee of any objection thereto.

2. To the extent of Lessor's right to grant the same, Lessee shall have the non-exclusive right to use any road or rights of way now existing through the Hollister Estate Lands to and from the Tidelands Area, together with the right to straighten, resurface, reconstruct, regrade, and change any now existing road or roads, provided Lessee shall first obtain all requisite and necessary consents or permits from persons other than Lessor which may own rights in and to said existing roads and/or rights of way. Lessee shall also have the right to construct additional roads over and across the Hollister Estate lands, including a bridge or bridges for the purpose of passage over, upon, and across the Hollister Estate lands, which said right shall, however, be non-exclusive. Said right shall not be exercised until Lessee shall have obtained the prior written approval of Lessor as to the route, location and type of construction, which such approval shall not be unreasonably withheld or delayed. Lessor shall consent to the construction by Lessee of such additional roads which shall be necessary or convenient in the construction, operation and maintenance of the easements which Lessee shall select in the manner provided in paragraph 3 hereof. All roads now on said Hollister Estate Lands which are used by Lessee, or which are subsequently constructed on said

Hollister Estate Lands by Lessee, shall be maintained at all times by Lessee in good order and repair, and all roads used by Lessee shall be kept oiled by Lessee, and Lessee shall repair and maintain in good condition all bridges used by it on the Hollister Estate Lands. The maintenance of roads required of Lessee hereunder shall include the laying of dust. All new roads constructed by Lessee shall be constructed in a good and workmanlike manner with culverts where necessary, and shall have proper drainage thereof to natural sources of drainage, all thereof to the end and intent that as little erosion as is consistently possible shall result therefrom. No vehicle shall be operated by Lessee on any roads on the demised premises or upon any lands of Lessor at a speed greater than twenty(20) miles per hour.

3. To the extent of Lessor's right to grant the same, Lessee shall have the right to use with Lessors and others the existing easements and rights of way for pipelines, power, telephone and telegraph lines on the Hollister Estate Lands, provided Lessee shall first obtain all requisite and necessary consents or permits from persons other than Lessor who own rights in and to said easements and rights of way.

Lessor also grants to Lessee a primary easement 50 feet wide from the Easterly boundary of the Hollister Estate Lands to the Westerly boundary thereof together with supplemental easements each 200 feet wide upon the portion of the Hollister Estate Lands where the same is contiguous with the Tidelands Area, and extending Southerly from the Southerly boundary of such primary easement to the Tidelands Area for the construction, extension, renewal, replacement, removal, operation and maintenance of pipelines, power, telephone and telegraph lines, none of which said supplemental easements shall be selected at a location closer than two (2) miles from any other of said supplemental easements so selected. * * *

All pipelines, power, telegraph and telephone lines shall be located so as to not unduly interfere with the present use of the Hollister Estate Lands. Through the cultivated or tillable portions of the Hollister Estate Lands all pipelines shall be located below plow depth, which shall be not less than eighteen (18) inches. * * * Said pipelines may be used to transport, to and from the Operating Base, gas produced by parties other than Lessee whether the same shall be produced from tide and submerged lands or otherwise. No pipelines laid pursuant to this lease may be used to transport oil produced from leases held by parties other than Lessee. Such pipelines, power, telephone and telegraph lines may be constructed and maintained either by Lessee or by the company supplying the particular service connected therewith or therefrom. Lessee shall also have the right to erect, use, and maintain upon the said easements so selected by Lessee upon the Hollister Estate Lands, such compressor plants or pipeline pump stations as may be necessary or convenient in the operation of pipelines installed and maintained by Lessee upon or across said Hollister Estate Lands. No such compressor plant or pipeline pump station shall occupy an area in excess of one-quarter (¼) of an acre. No such compressor plant or pipeline pump station shall be located within 500 feet of any building now located upon said Hollister Estate Lands which is presently being used for Lessors' ranching operations. Should Lessors present or future use of said Hollister Estate Lands require or make desirable the beautification of such compressor plants or pipeline stations, Lessee agrees to take such steps as Lessor shall reasonably request of Lessee in writing toward the beautification thereof so as to make the appearance of the same compatible with the present or future use of said Hollister Estate Lands and Lessee shall complete the same within a reasonable time after receipt of such request.

4. To the extent of Lessor's right to grant the same, Lessee shall have the right to construct such pipelines, ap-

proach roads, boat landings, causeways and piers to, on and across the Hollister Estate Lands as may be necessary or convenient in the operation and maintenance of any tidelands lease operated by Lessee within the Tidelands Area. Except for the Operating Base portion thereof (i) such pipelines, approach roads, boat landings, causeways and piers shall be limited to the supplemental 200 foot easements selected by Lessee in the manner provided in paragraph 3 hereof and (ii) Lessee shall be limited in the construction of such boat landings, causeways and piers to a total of three (3) thereof and shall not construct any boat landing, causeway or pier within two miles of any other boat landing, causeway or pier constructed by Lessee. Lessee shall also have the right to provide reasonable parking facilities within the said supplemental 200 foot easement adjacent to which it shall construct such boat landings, causeways and piers.

5. To the extent of Lessor's right to grant the same, Lessee shall have the right to construct and maintain such railroad spurs and sidings and heliports upon the Operating Base as may be necessary or convenient to it in its operations thereon or hereunder.

* * *

7. The rights contained in Paragraphs 2, 3, 4, 5 and 6 hereof shall include the right to transport such materials, supplies, personnel, water, waste water and any other product or thing necessary or convenient in connection with Lessee's operations within the Tideland Area to and from any offshore pier, island or other structure erected, maintained or used by Lessee on any tidelands lease held by it within the Tideland Area onto, over, upon and across the easements and rights of way herein given over the Hollister Estate Lands. Nothing contained in this lease shall limit the right of Lessee to use any gasoline plants and facilities for the recycling, repressuring, dehydrating and treating of substances which Lessee may construct upon the Operating

Base for the processing and treating of gas, whether or not produced from leases within the Tidelands Area and whether or not such gas shall be produced by Lessee. If any of the fences existing on said Hollister Estate Lands are cut by Lessee for its purpose, Lessee shall establish a good and substantial gate at such point, or in lieu thereof, adequate cattle guards. Lessee shall fence all sump holes and other openings to safeguard cattle which may be grazing on said land. It is expressly understood and agreed that there shall be no hunting, fishing, hiking or use of firearms on the demised premises by persons representing or employed by Lessee.

8. Lessee shall have the right at any time during the term of this lease to remove and, within [omitted in original] after the expiration or termination thereof, shall remove from the Hollister Estate Lands any machinery, rigs, piping, casing and other property and improvements belonging to or furnished by Lessee, including that affixed to the land; providing however, that in the event such removal shall not be completed prior to the expiration or termination of this lease Lessee shall pay to Lessor at the rate [omitted in original] period used to complete such removal. Lessee, after expiration or termination of this lease, shall fill all excavations made by it on the Hollister Estate Lands and in other respects restore said lands as nearly to its original condition as is reasonably practicable, but Lessee shall not be obligated to restore anything for which it may theretofore have made payment by way of damages.

* * *

10. Lessee, at its own cost and expense, shall pay for all labor performed and materials furnished in the operations of Lessee hereunder and Lessors shall not be chargeable with, or liable for, any part thereof. Lessee shall protect the Hollister Estate Lands from liens of every character arising from its operations. Lessor may post and

keep posted on the Hollister Estate Lands notices to protect the same from liens.

Lessee covenants and agrees to hold harmless the Lessor from any claims against said property which may attach as a lien thereon by reason of any claims, demands, or obligations which Lessee should pay. Lessee shall save harmless the Lessor and the premises at all times from any and all claims for damages of every kind or nature sustained by any persons whatsoever arising out of its operations under this lease.

* * *

20. Notwithstanding any other provision of this Surface Lease, it is expressly understood and agreed by Lessee and Lessor, that any and all interests granted or given by Lessor to Lessee over any portion of Lessor's property outside the Operating Base and some of which are sometimes referred to herein as easements, rights of way, primary easements, supplemental easements, or otherwise, and all similar interests, are intended to be, and are, nonexclusive, nonpossessory rights or interests only, and that Lessor reserves its full possessory interests including the right to use and occupy said lands subject to such nonexclusive, nonpossessory rights or interests so given or granted to Lessee hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in quadruplicate, as of the day and year first above written.

[Subscriptions and property descriptions omitted in printing]

MODIFICATION OF SURFACE LEASE

THIS AGREEMENT, made and entered into this 22nd day of September, 1967, by and between HOLLISTER COMPANY, a joint venture, composed of D-G-J Investment Co., a general partnership, and HARWEN COMPANY, a limited partnership, hereinafter called "First Party", and TEXACO Inc., a Delaware corporation, hereinafter called "Second Party",

WITNESSETH:

WHEREAS, under date of June 1, 1960, a surface lease, hereinafter referred to as "Surface Lease", was made and entered into by and between Hollister Estate Company, as Lessor, and Second Party, Monterey Oil Company, a Delaware corporation, and Newmont Oil Company, also a Delaware corporation, as Lessee, a memorandum of which said Surface Lease, entitled and hereinafter referred to as "Memorandum of Surface Lease", was recorded June 14, 1960, in Book 1753, at Page 263, of Official Records of Santa Barbara County, California; and

* * *

WHEREAS, Second Party now owns and is possessed of the entire right, title and interest of Lessee in and to said Surface Lease; and

* * *

WHEREAS, First Party now owns and is possessed of the entire right, title and interest of Lessor, in and to said Surface Lease; and

WHEREAS, it is the desire of the parties hereto to further amend said Surface Lease in certain particulars;

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto do mutually agree as follows, to-wit:

1. The second and third "WHEREAS" clauses on page 1 of said Surface Lease which read as follows:

> "WHEREAS, Lessee is the holder of and oil and gas lease from the State of California dated July 25, 1958, and designated as PRC 2206.1 which covers tide and submerged lands adjacent to said Hollister Estate Lands within the area described in Exhibit "B" attached hereto and made a part hereof, which said area is hereinafter referred to as "Tidelands Area" or "Tideland Area"; and"
>
> "WHEREAS, Lessee may acquire additional oil and gas leases covering tide and submerged lands within the Tidelands Area;"

shall be and the same are hereby deleted from said lease.

2. The second paragraph on page 2 of said lease which reads as follows:

> "TO HAVE AND TO HOLD the Operating Base as an oil and gas production, treating, storage and transportation center and the said easements and rights of way for the term of ten (10) years from and after the date hereof and so long thereafter as Lessee, or a Separate Lessee, as defined in paragraph 16 hereof, who shall have exercised the option contained therein, shall hold an oil and gas lease covering tide and submerged lands within the Tidelands Area."

shall be and the same is hereby modified to read as follows:

> "TO HAVE AND TO HOLD the Operating Base as an oil and gas production, treating, storage and transportation center and the said easements and rights of way for the term of forty (40) years from and after the date hereof and so long thereafter as Lessee, its successors or assigns, shall use said lands as an oil and gas production, treating, storage and transportation center, to effect the production of oil, gas and other hydrocarbon substances produced from

lands in or offshore of Ventura or Santa Barbara Counties, not to exceed in the aggregate, however, a term of 99 years."

3. That portion of paragraph 1 of said lease which reads as follows:

> "1. For the rights granted to it hereby Lessee shall pay to Lessor a sum of money equal to 2% of the cash amount or value of all royalties or other considerations which shall be paid by Lessee to the State of California during the term of this lease upon production of oil, gas or other hydrocarbon substances from all oil and gas leases held by Lessee covering tide and submerged lands located wholly or partially within the Tideland Area. In the event Lessee shall use any gasoline plants and facilities which it shall construct upon the Operating Base for the treating and processing of gas produced from leases covering tide and submerged lands which are located wholly or partially within the Tideland Area by producers who have no agreement with Lessor for the payment to Lessor of a rental, royalty, or percentage regarding the gas so produced, Lessee shall also pay to Lessor a sum equal to 2% of the cash amount or value of all royalties or other considerations which shall be paid by such producer to the State of California upon such gas so treated or processed."

shall be and the same is hereby modified to read as follows:

> "1. For the rights granted to it hereby Lessee shall pay to Lessor a sum of money equal to 2% of the cash amount or value of all royalties or other considerations which shall be paid by Lessee to its Lessor under the apposite lease during the term of this lease upon production of oil, gas or other hydrocarbon substances from all oil and gas leases held

by Lessee, the production from which is treated, stored or transported on or over said Hollister Estate Lands. In the event Lessee shall use any plants and facilities which it shall construct upon the Operating Base for the treating and processing of oil, gas or other hydrocarbon substances produced by producers who have no agreement with Lessor for the payment to Lessor of a rental, royalty, or percentage regarding the hydrocarbon substances so produced, Lessee shall also pay to Lessor a sum equal to 2% of the cash amount or value of all royalties or other considerations which shall be paid by such producer to the Lessor under the apposite lease covering the lands from which said substances are produced upon such oil, gas or other hydrocarbon substances so treated or processed."

* * *

IN WITNESS WHEREOF, the parties hereto have executed this agreement, in duplicate, as of the day and year first above written.

[Subscriptions omitted in printing]

PIPELINE FRANCHISE ISSUED BY CITY OF SEAL BEACH

ORDINANCE NO. 463

AN ORDINANCE OF THE CITY OF SEAL BEACH, CALIFORNIA, GRANTING TO MONTEREY OIL COMPANY, A CORPORATION, AND THE TEXAS COMPANY, A CORPORATION, JOINTLY, THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, A FRANCHISE TO LAY, CONSTRUCT, CONNECT WITH OTHER PIPE LINES, MAINTAIN, OPERATE, REPAIR, RENEW, ALTER, CHANGE THE SIZE AND NUMBER OF, REMOVE AND ABANDON CONDUITS, MAINS AND PIPE LINES FOR THE TRANSPORTATION OF OIL, PETROLEUM, GAS, GASOLINE, WATER AND OTHER SUBSTANCES, TOGETHER WITH ALL MANHOLES, VALVES, APPURTENANCES AND SERVICE CONNECTIONS, INCLUDING TELEPHONE LINES ON POLES OR IN CONDUITS, USED IN CONNECTION THEREWITH, IN, UNDER, ALONG AND ACROSS ALL PUBLIC HIGHWAYS, STREETS, AND ALLEYS IN THE CITY OF SEAL BEACH.

The City Council of the City of Seal Beach, does ordain as follows:

SECTION 1: **That a franchise and privilege is hereby granted to Monterey Oil Company, a corporation, and The Texas Company, a corporation, jointly, their respective successors and assigns, to construct from time to time, and, for a period of thirty (30) years from and after the date upon which this ordinance becomes effective, to lay, construct, connect with other pipe lines, maintain, operate, repair, renew, alter, change the size and number of, remove and abandon conduits, mains and pipe lines for the transportation of oil, petroleum, gas, gasoline, water and other substances together with all manholes,**

valves, appurtenances and service connections, including telephone lines on poles or in conduits used in connection therewith, necessary or convenient for the operation of such conduits, mains and pipe lines in, under, along and across all public highways, streets and alleys, and public places now or hereafter dedicated to public use within the City of Seal Beach, California, hereinafter referred to as "the City".

SECTION 2: This franchise is granted on the terms and conditions hereinafter contained, and the grantees shall file with the City Clerk of the City of Seal Beach a written acceptance hereof within thirty (30) days after the passage of this ordinance. The word "grantees" whenever used herein shall mean and include Monterey Oil Company and The Texas Company, jointly, their respective successors and assigns.

SECTION 3: The term of the franchise and privilege hereby granted shall by thirty (30) years from and after the date on which this ordinance becomes effective.

SECTION 4: The grantees shall have the right, subject to such regulations as are now or hereafter may be in force, to make all necessary excavations in said public highways, streets and alleys and public places for the laying, construction, connection with other pipe lines, maintenance, operation, repair, renewal, alteration, change in the size and number of, removal and abandonment of said conduits, mains, pipe lines, manholes, valves, appurtenances and service connections, including telephone lines on poles or in conduits, used in connection with said pipe lines. Before any conduit, main, pipe line or telephone line is constructed or abandoned a permit shall be secured from the City Council specifying the best and most desirable routing of said conduits, mains and lines, or the conditions under which they may be abandoned, as the case may be, and the City Council's decision on said

routing and conditions shall be final and binding on the grantees.

SECTION 5: The work of laying, constructing, connecting with other pipe lines, maintaining, operating, repairing, renewing, altering, changing the size and number of, removing and abandoning conduits, mains, pipe lines and telephone lines shall be conducted with the least possible obstruction and inconvenience to the public and with the least possible hindrance to the use of the highways, streets, alleys and public places for purposes of travel. All excavations shall be backfilled and the surface placed in as good condition as it was in at the beginning of such work and to the satisfaction of the Street Superintendent of the City. The grantees and each of them shall hold the City, its City Council and other officers, harmless from any claims for damage or injury suffered by any person by reason of any excavation or obstruction in said highways, streets alleys and public places occasioned by the laying, construction, connection with other pipe lines, maintenance, operation, repair, renewal, alteration, removal or abandonment of any conduits, mains, pipe lines or telephone lines of the grantees under this franchise and shall be responsible for such damage or injury.

• • •

SECTION 8: The grantees shall, during the life of this franchise, pay to the City, in lawful money of the United States, a sum equal to two per cent (2%) of the royalties paid by grantees to the State of California with respect to such oil, petroleum, gas and other hydrocarbon substances as are produced by means of offshore wells drilled on and bottomed under tide and submerged lands of the Pacific Ocean and are transported through any conduit, main or pipe line laid, constructed, maintained or operated under this franchise and then subject thereto. Each time that grantees or either of them shall during the life of this franchise pay any of the aforesaid royalties

to the State of California said grantees or grantee shall pay the City the sum equal to two per cent (2%) thereof to which the City is entitled as aforesaid and shall file with the City Clerk, a statement, verified by an officer or agent of such grantee or by respective officers or agents of the grantees, each of whom is authorized by law to make verified statements on behalf of the grantee of which he is an officer or agent, showing the aforesaid royalties with respect to which that payment to the City is being made. Commencing at the beginning of the sixth year after the date of this franchise and continuing during the then remaining life of this franchise, grantees shall pay to the City, in lawful money of the United States, two per cent (2%) of the gross annual receipts of the grantees arising from the use, operation or possession of this franchise, the same to be payable annually on or before the first day of April in each year with respect to gross receipts derived by the grantees from their operation of such conduits, mains and pipe lines during the year ending December 31, next preceding, *provided, however,* that any and all payments made by grantees or either of them to the City during such year ending December 31, next preceding, based upon royalties paid to the State shall be credited upon any sums which shall accrue under this sentence based upon said gross receipts during such year. With respect to the first and last calendar years for which the two per cent (2%) of the gross annual receipts is payable, such payments and the credits thereon shall be pro-rated according to the period of time this franchise shall have been in effect during such respective years. Annually on or before each such first day of April, grantees or either of them shall file with the City Clerk a statement, verified as aforesaid, showing their gross annual receipts from the operation of said conduits, mains and pipe lines during the year ending December 31, next preceding, and showing also the aggregate of the aforesaid royalties paid to the State

during such year. It is further provided that in no event shall the amount which the grantees shall be obligated to pay to the City hereinunder be less than a sum equal to two per cent (2%) of the royalties paid by grantees to the State of California as aforesaid.

* * *

SECTION 13: This franchise is not and shall not be exclusive.

SECTION 14: This ordinance shall take effect thirty (30) days after its adoption and the City Clerk shall certify to the passage and adoption of this ordinance, and shall cause the same to be published once in "The Seal Beach Post and Wave", a weekly newspaper of general circulation published and circulated within the City of Seal Beach, and which is hereby designated for that purpose.

PASSED, ADOPTED AND APPROVED this 13th day of December, 1954.

[Subscriptions omitted in printing]

STATE LANDS COMMISSION MEMORANDUM DATED AUGUST 8, 1975

Pursuant to the leads Mr. Northrop vocalized on July 25, 1975, in a meeting in his office, I have talked to the parties suggested as well as others. Listed are the parties contacted and a summary of the conversations.

Bob Johnston Victory Oil Company (213) 636-7454	Mr. Johnston was unable to think of any lease based on throughput. Suggested that if anyone might, that the cities of Torrance or Huntington Beach would be one of the first to lease in such a manner.
John Clark City of Torrance (213) 328-5310, Ext. 232	The City of Torrance has franchises based on the Broughton Act. Some of their leases are also tied to the Wholesale Price Index.
Jim Hibbart City of Huntington Beach (714) 536-5431	Informed me that the City of Huntington Beach has *no* franchise leases. Applicants are required to file plans for pipelines for engineering checking and review. No rentals received.
Jim Gilstrap (714) 551-6849	Several phone calls to Mr. Gilstrap resulted in his voicing of the gut feeling that as a general practice, such a rental rate is *not* being charged. Will phone if able to think of any lands.
Ray Bradley Berry Holding Co. (805) 769-8226	Mr. Bradley informed me that he had *no* knowledge of any lease based on throughput. Suggested I talk to Finn Moller of USA Service Station.
Fritz Dawson USA Service Station (213) 829-4383	Finn Moller referred me to Fritz Dawson who formerly worked with Continental Oil Company. Mr. Dawson stated he had never heard of such a precedent. He asked a few questions about the proposed regulations, and then expressed concern about the cumulative effect of such a policy.

Ken Montgomery .... City of Norwalk (213) 868-3254	The City of Norwalk bases its rental rate on a schedule similar to past State Lands Commission policy, i.e. 1¢/diameter inch/lineal foot. They differ, however, in that the 1¢ is multiplied by the cost of living index. Additionally all pipelines under 8″ are billed as if they are 8″.
Walter E. Plumb .... Port of Stockton	The Port of Stockton wharfage fee of .35/ton includes cost of construction, maintenance and replacement of facilities. Southern Pacific Pipeline Company is paying ½¢ for all volumes which cross the port's upland property. Pipeline is maintained by Southern Pacific.

JAMES F. FIACK
Analyst

STATE LANDS COMMISSION MEMORANDUM DATED AUGUST 11, 1975

I contacted Mr. R. Tom Benson, Executive Vice President of Universal Field Services located in Tulsa, Oklahoma and asked if he had any knowledge of or experience with throughput compensation. Mr. Benson emphatically stated that he had, in all of his years of experience, never heard of or acquired rights of way on the basis of throughput. He stated that there had been many instances where it had been tried by landowners, but that it had never been settled on that basis. Universal Field Services is one of the largest right-of-way acquisition organizations in the world. Mr. Benson's telephone number is (918) 628-1620 and his mailing address is P.O. Box 166, Tulsa, Oklahoma 74101.

I also contacted Mr. Ray Long, Vice President of Coats Field Services in Redwood City and asked him the same questions I asked Mr. Benson. Mr. Long said he had been in the business since 1938 and had never made a settlement or heard of a settlement being made on the basis of throughput. He or his company has worked on various pipelines from Texas to California and the Canadian pipeline; and in all of those thousands of miles, there was no throughput compensation. Mr. Long's telephone number is (415) 365-2300 and his mailing address is 43 Woodsworth Avenue, Redwood City, CA 94062.

I contacted Mr. Robert McCue, National Vice President of the American Right of Way Association, who is employed in the headquarters office of CalTrans in Sacra-

mento. Mr. McCue has no knowledge of any throughput as a basis of right of way compensation.

/s/ Linson L. Patton
Supervising Land Agent
Land Transactions

LLP/cap

bcc: J. F. Trout
L. H. Grimes
G. R. Horn
J. Fiack

FINAL REPORT AND COST FORMULA
FOR THE
CALIFORNIA ASSOCIATION OF
PORT AUTHORITIES

San Francisco, California, May 30, 1974

[Table of Contents omitted in printing]

MAIN LAFRENTZ & CO.
One California Street, San Francisco 94111
415-981-2156

The Members of the California Association
of Port Authorities

On August 11, 1971, we submitted a report to your membership described as "Preliminary Report and Cost Formula for the California Association of Port Authorities".

Since that date, various cost studies in compliance with the cost formula have been made by seven members and were reviewed by us. Our evaluation of the results, along with our comments and recommendations, were considered by your Economics and Finance Committee and your Advisory Committee.

On March 8, 1974, the Association approved various policies relating to the cost formula and authorized the preparation of this final report. The first ten chapters of the final report are unchanged in substance, but have been changed to the extent necessary to incorporate policy decisions of the Association. Chapter Eleven has been re-written completely as its contents in the preliminary report were mainly recommendations. In this report, its contents are conclusive.

MAIN LAFRENTZ & CO.
/s/ Philip E. Linnekin

San Francisco, California
May 30, 1974

Common Abbreviations

FMB, FMC or THE COMMISSION
Federal Maritime Commission or its Predecessor

THE ASSOCIATION or CAPA
California Association of Port Authorities

THE COMMITTEE
Economic and Finance Committee, CAPA

CHAPTER ONE — THE FREAS FORMULA

Origin

On November 7, 1944 the United States Maritime Commission (Predecessor to the present Federal Maritime Commission) instituted an order of inquiry in Docket No. 640, Terminal Rate Structure—California Ports. The Commission engaged MR. HOWARD G. FREAS as an independent consultant to make a study of ten California public ports or private marine terminals, each of whom were signatory to U.S.M.C. Agreement No. 7345, authorized and approved pursuant to Section 15 of the Shipping Act, 1916. Under the terms of the agreement, the members associated themselves under the name "California Association of Port Authorities."

This Association was formed on April 12, 1940 and exists today with but minor changes in its membership. The objectives and purposes of the Association in the main are "to promote fair and honorable business practices among those engaged in the marine terminal industry, to more adequately serve the interests of the shipping public at their terminals in the State of California and to establish and maintain just and reasonable, and, as far as practicable, uniform terminal rates, charges, classifications, rules, regulations and practices at such terminals for or in connection with interstate and foreign waterborne traffic . . . ." (quoted from Agreement No. 7345).

Purpose

The purpose of the study, in the language of the order of inquiry, was to obtain information as to (1) a proper basis for the segregation of those services and costs thereof, rendered for the account of the vessel from those rendered for the account of the cargo, (2) a proper basis for allocating costs assignable to the vessel as between Dockage, Service Charge and other services rendered to the vessel, (3) a proper basis for allocating costs assigned to the cargo as between Wharfage, Wharf Demurrage and Storage and other services rendered to

the cargo, (4) a proper basis for determining carrying charges on waterways, land, structures, and other terminal property devoted to furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, and (5) any other services and costs necessary to a determination of the above-mentioned bases.

Background and Scope of Study

The Freas study commenced with a review of a previous study by Dr. Ford K. Edwards, who at that time was Transportation Economist for the California Railroad Commission. The Edwards report was dated May 16, 1936 and was called "A Formula for the Determination of Port and Marine Terminal Costs for Rate Making Purposes." It was introduced in the record of the U. S. Maritime Commission in Docket 555.

The Edwards study was limited to privately-operated marine terminals in the San Francisco bay area, who at that time came under the regulatory influence of the California Railroad Commission (now Public Utilities Commission). It did not include publicly-owned ports, although Edwards reported that officials of such bay area ports were consulted and cooperated freely with him.

All of the entities studied by Edwards were not only privately owned, but were also operating terminals. An operating marine terminal provides facilities for the accommodation of vessels and cargo, but also provides cargo handling and clerical services (except stevedoring) necessary to the interchange of cargo between water and land carriers. This is in contrast to the so-called landlord port, which provides terminal facilities but does not perform services. In the latter situation terminal services are performed either by steamship companies themselves, or by terminal operators under contract.

The Freas study was of broader scope than the Edwards study in several respects:

1. It covered both operating and non-operating terminals.

2. It covered public ports as well as private terminals.

3. It included the Port of Stockton and Southern California ports as well as bay area ports.

Although broader in scope, the Freas study generally followed the Edwards study in the underlying principles of cost determination and allocation, and to some extent simplified cost allocation processes. The basic principle underlying the cost allocations is the same in both studies. Simply stated, the costs are allocated according to use by vessel or cargo, and to the various services provided for each. The underlying conclusion of each is that the vessel is responsible to the port for all usages and services from, but not including the point of rest on outbound traffic, and to but not including the point of rest on inbound traffic. This principle has been followed in many terminal rate cases on the Pacific Coast. It is as equally valid for this study as it was held to be by Freas and Edwards.

FMC Approval

The Freas study culminated in a report of 184 pages entitled "A Study of Terminal Operations Including a Formula for Cost Finding," dated September 9, 1946. The report included a blank formula and a detailed explanation of the cost determination and allocation process. It was accompanied by a completed cost formula for each of the ten ports included, based upon the fiscal year ended June 30, 1940. This year was believed to be the most recent period available at the time not distorted by wartime abnormalities.

Formal hearings were held by the Commission and its decision was rendered on August 24, 1948 (3 USMC 57). The trial examiner's conclusions resulted in seven recommendations to the Commission, the first two of which,

as follows, were adopted by the Commission: (1) Approve the formula as a proper method of segregating terminal costs and charges to the various wharfinger services, (2) Find that respondents operating publicly-owned terminals are entitled to a fair return on investment. The other recommendations of the examiner dealt with the proper treatment of gift property, rate base and rate of return. Although the Commission did not approve those recommendations, its decision included the following language. "It is realized that some basis must be used in computing carrying charges and respondents are not foreclosed from using any basis which they are prepared to justify as producing reasonable rates called for by their agreement."

Subsequent Developments

Since its approval by the Commission, the Freas Formula has exerted an ever-expanding influence on rate making processes on the Pacific Coast, and to some extent other coastal areas of the United States.

This Association has made annual studies almost without exception since 1952. Composite data for the membership have provided a basic point of departure for measuring the adequacy of rates and for attaining a high degree of uniformity in published tariff charges to vessel and cargo. In addition, certain underlying principles of cost determination and allocation have had some influence in the negotiation of preferential assignments and leases related to the container revolution.

With minor modification, the formula was approved by the Commission for Pacific Northwest Ports in FMC Docket No. 744 "Terminal Rate Structure—Pacific Northwest Ports," decided June 8, 1956 (5 FMB 53).

With substantial modification, it was also approved by the Commission for grain terminals, FMC Docket 66-48

"Rules and Practices of Pacific Northwest Tidewater Elevators Association," served March 8, 1968.

It has been referred to frequently in many other matters of marine terminal litigation on the Pacific Coast, and even the Port of Chicago and the Commonwealth of Puerto Rico.

It not only has the sanctity of approval by the Federal Maritime Commission. It is a creation with its origin in the Commission's own order of inquiry. It has done much for those segments of the industry with the vision to see its value in contributing to the development of fair and reasonable rates and such uniformity as is practicable. It has far surpassed the vision of its own creator, Howard Freas.

CHAPTER TWO — THE NEED FOR CHANGE

Construction and Operation

As previously observed, the Freas Formula was created in 1946, based upon operations for the fiscal year ended June 30, 1940.

No purpose would be served to describe the many changes of design and materials in terminal construction that have occurred in the last thirty years. Terminal construction has had to keep pace with vessel construction with the common goal of a fast turn around of the vessel in port.

Operationally as well, there have been ever-changing patterns. From the tractor and four-wheeler of pre-World War II, there was a transition to fork lifts and pallets, pre-palletizing of unitized cargo, then containers integrated with land carriers, all of this related to general cargo. The postwar demand for bulk cargoes in the Pacific Basin also created new dimensions in the operations of Pacific Coast ports. The growth of the trucking industry seriously affected the coastwise and intercoastal trades,

and contributed to the rapid obsolescence of marine terminal facilities constructed when land carriage by rail was predominant.

The priority goal in the industry is to reduce the cost of labor. With labor prices going up and efficiency relatively unchanging, the only solution is to reduce the quantity of labor required. Thus, the industry turned to capital to provide the facilities for storage and handling at the terminal and for carriage on land and sea.

ORGANIZATION CHANGE

The need for capital funds of such magnitude heralded the gradual demise of the private terminal operator. The private operators had generated greater efficiency in handling labor, and were generally taking the lead in ratemaking. The traditional approach for them was to make formal application to the Public Utilities Commission for rate increases, which when granted, were conditioned upon public ports adopting the same rate levels.

This was why the Edwards study was limited to private terminals, recognizing the regulatory requirements of the time. The Freas study, not greatly removed in time, and following the Edwards study, was also geared more to the precise cost requirements of the private terminals, all of whom were operating terminals, than to the landlord ports. It naturally followed that the Freas Formula was as much concerned about the labor costs of the operating terminals as with the capital costs.

The Association goal of uniformity likewise was thrust toward uniform rates for Accessorial Services as well as for rates for the use of facilities. The goal of uniformity today is limited, however, to those rates associated with the use of facilities, viz; Dockage, Wharfage, Wharf Demurrage and Storage, and being limited further to those facilities provided on a basis of published tariffs. Although it is still necessary to determine costs of the Accessorial Ser-

vices, it is considered to be more of an individual port problem rather than an Association matter.

The present study, therefore, is directed primarily to the development of costs of those services common to all members and where uniformity is of interest to them individually as well as through Association membership. At the same time, however, to be as meaningful as possible to individual members, the cost formula provides for the accumulation of the cost of Accessorial Services and for the costs of those facilities provided to the public on a basis of other than published tariffs.

It is well to emphasize at this time that costs in themselves do not dictate rates. Cost is but one of the factors to be considered in rate-making. Other factors include volume, value, competition, what the traffic will bear, etc. The sole objective of this study is the determination of cost on as uniform a basis as possible to achieve the common goals of the Association as a whole, and to permit further refinement as desired by the individual members.

CHAPTER THREE—SCOPE OF PRESENT STUDY

The following members of the California Association of Port Authorities are included in this study.

ENCINAL TERMINALS
PORT OF LONG BEACH
PORT OF LOS ANGELES
PORT OF OAKLAND
PORT OF SACRAMENTO
PORT OF SAN DIEGO
PORT OF SAN FRANCISCO

Physical inspections were made of their facilities, and key personnel were interviewed as necessary during the study. All underlying financial and statistical data used in the study were furnished by port personnel and were not inde-

pendently verified by reference to port records or by the application of generally accepted auditing standards. Composite figures for the Association were compiled from the figures furnished by the individual members.

The Association directed that the study develop a uniform method of determining the cost of Dockage, Wharfage, Wharf Demurrage and Storage at various facilities provided to the public on a published tariff basis. The facilities to be included are as follows:

General cargo, break-bulk
General cargo, container
General cargo, combination break-bulk and container
Dry bulk
Liquid bulk

Ensuing discussion with the Economic and Finance Committee of the Association indicated a need for consideration of the costs of cranes at general cargo wharves. Provision for this has accordingly been made in the cost formula.

In order to serve the needs of the operating terminals, provision is made in the cost formula for the accumulation of the costs of Accessorial Services. Such services include the Service Charge, Car Loading and Unloading, Truck Loading and Unloading, and a variety of other services for vessel and for cargo. Although not of interest to the entire Association, they are important to operating ports. And although uniformity of rates is a secondary issue, suggestions are made in the cost formula for a reasonable degree of uniformity in the accumulation of costs of such services.

Another reason for this treatment is compatibility with northwest ports. Most of the northwest ports are operating ports, and their costs over the years have also been patterned largely by the Freas Formula. It would be undesirable to develop a cost formula for California ports that

would be an extreme departure from principles and methods that have been generally followed on the entire Pacific Coast.

As mentioned previously, certain Association members are just as concerned about costs of their special facilities as they are about the published tariff facilities. Provision is accordingly made in the cost formula for the accumulation of such costs in total, and a special schedule is provided for detailed refinements as desired. General guide lines are suggested for such refinements.

CHAPTER FOUR—THE RATE BASE

Where capital investment is the predominant production factor in an industry, rates must be established at a sufficient level to provide for both the return of capital (or as will be shown later, its reproduction) and a reasonable return on capital. This is a fundamental principle pertaining to all regulated industries and particularly those which are public utilities. Ports are generally considered to be public utilities, although in some respects, such as their providing special facilities for single users, they would not be public utilities.

The valuation of port properties devoted to public use, commonly called the "rate base," is the most important and the initial point of departure in rate-making, and thus of cost finding for rate-making purposes.

The problem is one of considerable magnitude. The solution requires a look at the past, present, and future. Terminal facilities of various ages, but generally constructed through a constant period of rising costs must be valued fairly for both present and future users. Costs of the past reflected in user rates of the past are meaningless, unless the rate increases of the past have kept abreast of the cost increases. The experience of this Association indicates that the rates of its members have not kept up with the cost increases.

One inescapable influence of the past, however, and a continuing influence on the present and future, is that exerted by the regulatory body of jurisdiction. As to ports, this body at present is the Federal Maritime Commission. At an earlier time, the Public Utilities Commission of California exercised similar authority over the private terminal industry.

Both the Edwards and Freas studies were oriented toward the regulatory influence. As a matter of fact, Edwards was employed by the Public Utilities Commission when he made his study. Freas was under contract to the Federal Maritime Commission. It naturally follows that any successor study that adopts similar principles would be ill-conceived if it were not to consider this very important premise. It becomes even more essential when departures from precedent are involved. A dramatic departure is involved herein by the recommendation to adopt reproduction cost as the rate base.

HISTORY—THE EDWARDS STUDY

The Edwards Study adopted a rate base of current market values for land and undepreciated original cost of improvements and equipment. This rate base was approved by the Public Utilities Commission and was recognized as proper by it in a number of rate cases of private terminal operators.

Edwards justified the use of undepreciated cost as a rate base partly because of his use of a sinking fund method for annual depreciation instead of straight-line depreciation. The following is quoted from his report, Page 178. "Depreciation was charged off upon a 5% sinking fund basis, wherein equal annual payments are set aside out of operating revenues which, compounded at 5 percent interest, will accumulate to a sufficient amount at the end of the service life of the unit *to replace it at its original cost.*" (emphasis supplied)

A further reason was his conclusion that at that time reproduction costs would have been substantially the same as the original costs of the properties. On Page 186 he stated the following: "In accordance with the use of the sinking fund method of depreciation, the original cost of the properties was used as a rate base. A check at one of the major terminals applying the straight-line method and a depreciated value based upon the estimated remaining service lives of the major property units showed little change in the results obtained.

A check of the construction costs of new wharf units built within the past two years indicates that the costs differ very little from the costs of similar construction approximately ten years previous when many of the units now in existence were built. *The authors conclude that the reproduction costs now are substantially the same as the original costs of the properties.*" (emphasis supplied)

Implicit in the above is the fact that the Edwards depreciation and rate base decisions were geared to the then prevailing economic situation. Construction costs were stable. Thus depreciation provisions need only be sufficient to replace the property at its "original costs." Likewise the rate base and consequent return on capital needed only to be geared to original cost. The Edwards logic and reasoning in a period of stable construction costs suggests strongly that different conclusions would have been reached in today's economy. The thirty-five years since the Edwards Study have been characterized in the main by steadily rising costs, and there are no indications of this trend being arrested. Edwards would undoubtedly have made a strong case for a reproduction cost rate base under modern conditions.

HISTORY—THE FREAS STUDY

Freas, like Edwards, adopted current market values as a rate base for land. He makes quite clear what is to be re-

flected in such values on Page 52 of his report. "Market values of land are enhanced by improvements, such as reclamation, drainage, bulkheads or seawalls necessary to protect land . . . . . ., dredging and breakwaters, ... lighthouses and channel lights. The cost of such improvements, by whomsoever incurred, is therefore reflected in the value of the land. It is not otherwise considered in setting up the rate base. This does not apply, however, to fills, drainage facilities, or bulkheads constructed in connection with particular structures, maintenance dredging, or the operation of any facilities."

With regard to rate base and depreciation of buildings and improvements, Freas shares some of Edwards' views, but the World War II push into the rising cost economy begins to emerge and adds further dimension to the Edwards' views. The following is extracted from Pages 53-56 of the Freas report (in part only).

"For purposes of computing depreciation, the writer advocates the use, wherever practicable, of original costs. The determination of a rate base, however, should not be so narrowly grounded. *Original costs are still important, but they are not the sole criteria. To the extent that it is practicable to do so all elements of value should, in this instance, be considered. Important among these other elements is the cost of reproducing the property.* (emphasis supplied)

Regardless of the standards employed for determining the measure of the rate base, careful consideration must be given to the question of depreciation. Excepting when a practice of setting up a depreciation reserve and crediting it with appropriate earnings is followed, it is the value of the property at the time in issue that indicates the probable measure of the rate base. Depreciation has been computed by the straight-line method; accordingly, considerations of value have been on a depreciated basis."

HISTORY—THE FMC ATTITUDE

In its decision in Docket 640 and all subsequent cases involving marine terminal *published tariff* rates, the Federal Maritime Commission (and predecessors) have taken a consistent and lenient position with respect to the rate base. Although not adopting or approving any specific basis of valuation in Docket 640, it concluded that "respondents (members of the CAPA) are not foreclosed from using any basis which they are prepared to justify as producing reasonable rates called for by their agreement."

The basis used by CAPA members until the present time has been current market value of land and depreciated original costs for improvements, with depreciation provisions on the straight-line method. In the opinion of the CAPA and in our opinion, depreciated original cost as a rate basis is no longer valid in the current economic circumstances.

The only known case where reproduction costs were used by respondents in a terminal rate proceeding was in FMC Docket 66-48 "Rules and Practices of the Pacific Northwest Tidewater Elevators Association" decided March 8, 1968. This case involved eight marine grain terminals in the northwest. Reproduction costs were used basically for the following reasons:

1. Ages of the elevators were in great variance, ranging from two to forty years.

2. Original cost data, although available generally, was not available in the precise detail needed for cost allocation (a considerably greater problem at a grain terminal than at a general cargo terminal, due to the complexity of the facilities).

3. Reproduction cost appraisals were available in most instances in sufficient detail for cost allocation purposes.

4. Where uniformity was an important objective, reproduction cost data permitted a considerably greater degree of uniformity in the cost approach.

5. It was far more realistic in the economic conditions of the time, and for the foreseeable future.

The trial examiner concluded in his recommended decision that "depreciation and return on investment are properly based on original cost rather than reproduction cost and a rate of return on this base that does not exceed ten percent after taxes, in the circumstances prevailing here, does not constitute an unjust or unreasonable practice."

The Commission neither agreed nor disagreed with the examiner, although it did adopt his decision in support of the respondents. The Commission's conclusion is most interesting, as follows:

"There is some language in the initial decision which, despite the examiner's careful disclaimer, might be interpreted to mean that we are attempting to subject terminals' overall rate structures and levels of return to the same kind of regulation which we exercise over carrier rates under the Intercoastal Act. We do not believe that the conclusion of the examiner with respect to the reasonableness of respondents' rate of return on investment or his conclusions concerning the inclusion of leased property in the rate base, and respondents' method of valuing land and plant facilities, were necessary or relevant, to his conclusions under the second paragraph of Section 17, which is addressed to unjust or unreasonable practices or regulations. *Thus, in adopting his initial decision, we neither agree nor disagree with these conclusions or the reasons supporting them.*" (emphasis supplied)

The Commission thus tacitly recognizes and admits to less regulatory authority over marine terminals than it exercises over intercoastal water carriers. As to the rate base, it is interesting to note that the examiner's decision to reject reproduction cost recommended adoption of depreciated original cost, the so-called "prudent investment" theory that the Commission has followed consistently in car-

rier cases. Thus, even where the Commission had ample precedent in carrier cases to support the examiner, it did not do so. One respects its reluctance to extend its jurisdiction on legal grounds, but one can only conjecture as to its economic theory. They appear to be reaffirming the predecessor position in Docket 640, but without a direct reference thereto.

It is worth mentioning at this point that the rate base is far more important to ports and terminals than it is to water carriers. Water carriers have substantial costs for vessel and shoreside wages, voyage and vessel operating costs, cargo handling, etc. Labor and other predominantly variable costs account for the major portion of total costs. Thus, capital costs are of less impact on their rate structures. Ports and terminals, especially the non-operating, are characterized mainly by fixed costs related to capital investments. Thus, rate base and rate of return are extremely critical considerations in costing as a prelude to rate-making.

THE CASE FOR REPRODUCTION COST AS THE RATE BASE

The observations by Edwards and Freas and the attitude of the Federal Maritime Commission at that time provide abundant background for reproduction cost as a rate base for marine terminals. The more recent (1968) attitude of the Commission (Docket 66-48) in refusing to extend its powers is also encouraging.

The economic facts of today, however, provide the most compelling and realistic grounds for adopting reproduction cost as a rate base for port structures. Some of these facts are as follows:

1. Many port facilities are still used and useful, although they were originally constructed prior to or immediately after World War II.

2. Older facilities built in low cost construction years must be replaced in high cost construction periods.

3. Port facilities constructed in the last twenty years reflect ever increasing cost levels.

4. Ocean carriers, particularly American flag lines, are severely burdened with capital improvements, particularly with respect to advanced technology of cargo handling and packaging. They must look to the ports for construction of terminal facilities.

5. Except in rare situations, such as captive cargo controlled by oil refineries, shippers cannot economically build their own terminals and use them to optimum efficiency.

6. Ports are competitive, yet strive toward uniformity in the interest of the shipping public. Unless port properties are valued at uniform cost levels, considerable latitude may be exercised in rates and practices. Low rates based upon inferior physical facilities could lead to serious deterioration in quality of service.

7. Reproduction cost provides a procedure for recognizing periods of declining prices as well as periods of rising prices.

8. It is an acceptable method of recognizing the fair value of property devoted to public use today, and to measure the adequacy of rate structures designed to restore or replace the property when it is no longer used or useful.

9. By applying this method in measuring the construction costs and establishing rates for published tariff facilities, a close parity will exist with container facilities, all of which were built at relatively current construction cost periods (and many of which are still under construction).

MARKET VALUE OF LAND

There appears to be no dissension within the terminal industry or the regulatory agencies with respect to the valuation of land. Edwards, Freas, and the Public Utilities Commission of California all agreed with this treatment. And the Federal Maritime Commission, although not approving the concept per se in Docket 640 or in Docket 66-48, neither did it disapprove. More positively, they have given their acquiescence in a number of recent cases involving preferential assignments and leases of containerized facilities.

In adopting current market value of land as a part of the rate base, however, certain limitations and guidelines should be meticulously followed:

1. As previously observed (citing the Freas study) bulkheads, breakwaters, seawalls, original dredging, etc. are the expenditures which give the land its value. Such expenditures cannot thus be included as a cost of improvements unless they are an integral part of the construction of a particular facility. Care must be exercised that the same values do not appear in the rate base in more than one form.

2. The current market values should be related to use as a marine terminal, contrary to the general practice of valuing land at its highest and best use.

3. The value should be expressed on a per square foot unit, and limited to "surface" land. "Surface" land for this purpose should include all land of the terminal facilities devoted directly to the marine terminal function, and various support areas such as parking, offices, roadways, etc. No waterway should be included for the purpose of determining total value, except where it may lie under a wharf structure. Recognizing that the water access is the dominant feature in establishing value, however, provision is made for waterways in the cost allocations. Non-

revenue producing land should be included to the extent that it contributes to the wharfinger operation. Such non-revenue lands may include administration buildings, shops, access roads, etc.

4. Land values fluctuate considerably between ports in metropolitan coastal areas and those in inland waterway areas. For purposes of uniformity, therefore, a weighted average of all ports should be used. The composite results for the Association will be identical on a weighted average basis to the results obtained by each port using its own value. A uniform value has another benefit in that it would prevent those ports with low land value from establishing low rates to gain a competitive advantage. The only detriment to using the weighted average method is that on this method the values of the larger ports will tend to dominate.

5. Values should be established by competent authority. From an evidential point of view the values would be most meaningful if they were made by independent outside appraisers. It is doubtful that such people, however, would be more competent than port engineers or property managers. In any event, where competency of port personnel is questionable, independent appraisals are desirable.

NOTE: Competency and independence are equally important in establishing reproduction costs as they are for land values.

DEPRECIATION

The function of depreciation accounting normally provides for a systematic charge to operating expenses of the cost of a capital asset over its estimated useful life. Three things of value to management are accomplished in this exercise.

1. Net earnings for a given period reflect the proportionate contribution of the capital asset and are thus not overstated.

2. The amount written off becomes a "fund" retained in the business (by reducing the amount of retained earnings available for dividends).

3. The assets of the business are stated conservatively by a reduction of the accumulated depreciation from the cost.

A generally accepted principle of accounting requires that for financial reporting purposes, capital assets and their systematic charges to operations be based upon cost. There are those in the financial and accounting world who challenge this concept for financial reporting, but independent public accountants may not give unqualified opinions on financial statements on any other basis. Regulatory bodies have yet to permit depreciation expenses for rate-making purposes on any basis other than the cost recovery method.

This Association generally takes the position that the rate base is properly based upon depreciated reproduction cost and that annual depreciation should likewise be based. The theoretical position is that the related properties cannot be reproduced at the same cost levels that they were originally constructed. This is an indisputable fact. But the basic theory of rate-making is that the rate payer must pay for a return of capital (depreciation) and a return on capital (cost of money, risk, profit, etc.).

It does not seem reasonable or fair to charge depreciation to the present user of a terminal property on any basis other than the recovery of the original cost of property devoted to his use. This would be contrary to all generally accepted accounting practices, and particularly as applied by regulatory authority. The problem of replacement of property at inflated price levels is more logically and justifiably the function of the rate base and the rate of return.

GIFT AND RENTED PROPERTY

At the time of the Freas study, three of the private terminals leased all or a substantial portion of their terminal facilities from public ports and, in one case, from a municipality. In those instances, actual rentals were ignored, and the lessor's carrying charges were used in lieu. Although this is not a problem in the present study, it could be in future studies.

A similar approach was used in the grain terminal study in the northwest (Docket 66-48) with which the examiner concurred. We are in agreement with Freas in this area, and generally for similar reasons, briefly as follows:

1. Uniformity in the cost system.
2. Avoidance of precise determination as to the reasonableness of rentals which are frequently negotiated under unusual circumstances.
3. Difficulty of providing for a profit factor on a leased terminal, as contrasted to the return on investment approach.

The subject of gift property was treated at some length by Freas, but he was somewhat vague as to conclusion. He generally concluded that gift property should not be included in the rate base, but that it was proper to include depreciation as an expense. With the exception of land, there was very little gift property. It seems proper to include the land under the current market value theory, particularly as so many sustained costs that give the land its value are otherwise not included.

Gift property currently is of considerably greater magnitude. Federal grant programs, particularly in poverty and distressed areas, have been quite prominent at some of the ports. The amount of such gifts may be as high as 50% of the total construction cost. There is no doubt but that the main purpose of such gifts is to assist public ports to construct facilities which will create jobs.

The following criteria are suggested as a reasonable and fair treatment of such gifts in relationship to rate base accounting:

1. The full amount of such gifts be included in the rate base, and at a full rate of return, when all of the following considerations are met:

a) They are gifts of public funds.

b) The total amount of the gifts are allocated on a reasonable (not necessarily pro rata) basis to all facilities in the entire property being developed.

c) There is a competitive relationship between the particular port and other ports. In this situation the port benefited by the gift should not be permitted to exclude the return on the gift property to enable it to publish lesser rates.

2. Gifts should be excluded from the improved property portion of the rate base under the following conditions:

a) When there is no effective competition from other ports or from other modes of traffic.

Clearly in this latter circumstance all parties benefit sufficiently without a need for a return on investment for the port. The port is benefited directly by the recovery of depreciation and the local community is benefited by the attraction of industry and by the creation of jobs. The shipping public should likewise benefit from reduced rates as an incentive to early use of the facilities, without which the primary objective of the gifts cannot be realized.

It is reasonable to provide for a return on the current market value of land in both situations for the reasons which were previously stated.

Policies Adopted by CAPA

1. **The rate base**

The traditional rate base for CAPA members has been land at market value, improvements and equipment at depreciated historical (original) cost. Throughout this chapter, the discussion relative to reproduction cost applies only to real property improvements. CAPA has adopted a rate base of depreciated reproduction cost for such improvements, land and equipment remaining at the traditional practice.

2. **Depreciation expense**

Annual depreciation expense will be reflected in cost studies based upon original costs amortized on the straight-line method.

3. **Other issues**

In the absence of comment or objection on any other contents of this chapter, they are also presumed to be adopted as policy.

CHAPTER FIVE—THE RATE OF RETURN

Along with the rate base, the rate of return is very closely related. Together they become the most important and critical issues in cost studies for rate-making in the marine terminal industry (as in any other regulated public utility enterprise.) The rate of return by itself is meaningless; it must be related to the rate base. For example, assuming that 10% of the rate base is a proper rate, the dollar amount varies as the rate base itself varies.

	Rate Base	10% Return
Original cost	$1,000,000	$100,000
Depreciated original cost	800,000	80,000
Reproduction cost	1,500,000	150,000

As with the rate base, it is important to see what Edwards, Freas and the Commissions have said about the rate of return.

EDWARDS

"The return upon the investment is here interpreted as the cost of capital. It is the amount available for interest, dividends, and surplus.

'The rate should be sufficient to attract capital to the industry and should be similar to that for similar undertakings attended by corresponding risks and uncertainties. The requirements in this have been summed up by the U.S. Supreme Court as follows:

> 'The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. (Bluefield Waterworks and Improvement Company vs. Public Service Commission, 262 U.S. (79).)"

Among the factors that Edwards considered as supporting a high rate of return were the extreme hazards of the industry (as contrasted to other public utilities), vulnerability to labor troubles, and a change in the character of cargo from an emphasis on bulk cargo to general cargo.

The factors tending toward a low rate of return were favorable interest rates, a healthy competitive relationship of private terminals vs. public ports, a steady increase in traffic, ample capital being attracted to the industry.

Edwards concluded that a 7% return was reasonable on private terminal property, a 6% return on land and 6.5% on improvements of Port of Oakland owned property (used by Howard Terminal) and a 5.3% rate for City of Richmond property (used by Parr-Richmond Terminal Co.). The City of Richmond rate represented the average rate of interest on outstanding harbor improvement bonds.

These rates, as previously stated, were applied to current market value of land, and to original costs (undepreciated) of improvements and equipment. Both the rates and the rate base were accepted by the Public Utilities Commission of California.

At that time, income taxes were of far less significance than they are today, and Edwards was silent on the subject. There is little question that under today's tax structure, given all other related facts that he did consider, his rates of return would be interpreted as "after provision for income taxes."

FREAS

With reasoning basically similar to Edwards, Freas added a further dimension to rate of return considerations by extending it to public ports. Yet the 7% rate that he adopted was peculiarly geared to the private terminals.

His reasoning is more fully stated than Edwards' and is quoted intact.

"Since it is the end result and not the method by which it is attained that determines the propriety of a return on invested capital,[1] it is of small consequence whether the amount of the base is liberal and the rate of return scant, or whether the converse is true. It is highly important, however, that the two be properly related.

'We are concerned here with an industry that, although subject to regulation, is highly competitive. There is no requirement, either municipal, state or federal, prohibiting the operation of a wharf without a certificate of public convenience and necessity such as is prerequisite to the conduct of many public utility businesses. Moreover, competition is not confined to similar enterprises in the same area. Any major terminal on the Pacific Coast is a competitor of each of the terminals involved, and the business of all

[1]F.P.C. vs. Hope Natural Gas Co., 320 U.S. 591 (1944).

may be seriously affected by a shifting of tonnage between water and land carriers.

'Secondly, the busines is subject to fluctuations of serious import. Seasonal peaks and valleys, and those resulting from periods of prosperity and depression, are much more pronounced than is the case with many utilities.

'Thirdly, a major change in economic conditions may jeopardize an entire investment. To illustrate, some years ago most of these terminals enjoyed considerable revenue from coast-wise and inland waterway traffic. Due to changed economic conditions, the volume of that traffic is but a fraction of what it formerly was, and an appreciable increase is at least problematical. Such situations, while they have a forceful impact upon the wharfinger business, are completely beyond the operator's control. This is likewise true of important matters of public policy, such as the price set by the Government on vessels sold to ship operators. It is likewise true of labor disturbances which, though not involving the terminal, may suddenly terminate the shipping upon which the terminal is dependent.

'On the other hand, the terminals in question are, generally speaking, well established. There is good reason to believe that the postwar traffic will at least equal and in many instances exceed that of pre-war years. Half of the terminals, owned by political subdivisions, have the credit backing of the State or of important municipalities, and none seem to encounter any great difficulty in securing needed capital. Interest rates on invested capital and returns allowed other utilities have declined substantially.

'This study discloses a wide variation in wharfinger operating costs. This variation is narrowed if calculations assuming equal use of facilities are made. Even then it is substantial. On the experience of the fiscal year 1939-1940, rates reflecting costs, exclusive of any return on capital, would for several of the terminals at least be prohibitive.

Creatures of political subdivisions can and frequently do operate without provision for profit. It cannot be said, therefore, that a given rate of return is necessary to produce, in each of the ten instances under consideration, an end result in dollars necessary to 'assure confidence in the financial soundness of the utility and . . . adequate, under efficient and economical management, to maintain and support its credit and enable it to raise money necessary for the proper discharge of its public duties.[1]

'The developed costs for the privately-owned operations are generally less than those of the ones that are publicly-owned. It is considered proper, therefore, to determine the return for the former and to extend it to the latter. Since this study presupposes conditions obtaining in 1939 and 1940, interest rates prevailing in those years must be used. For the private operators it is believed that returns of seven percent on the rate basis determined as hereinbefore indicated would have produced amounts which would have been adequate and fair alike to the terminals and to the carriers and shipping public using their facilities. That percentage has therefore been used as the basis for the calculations in this study.' "

In adopting a 7% return, Freas applied this to a rate base of current market value of land, and generally depreciated original costs of structures and equipment (although some reproduction costs were included).

THE FMC ATTITUDE

The Commission has never prescribed a rate of return for general rates of a marine terminal. In Docket 640 it said that public ports, as well as private terminals, are entitled to a fair rate of return. And in Docket 66-48 it neither agreed nor disagreed with the examiner's conclu-

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[1]Bluefield Waterworks and Improvement Company vs. Public Service Commission, 262 U.S. 679.

sion that with respect to grain terminals, a reasonable rate of return would be 10% after income taxes on a rate base of original cost of land and depreciated original cost of improvements and equipment. (This conclusion, incidentally, resulted in an increase in total costs of $700,000 from a base of approximately $10,000,000 over the respondents' rate base of market value of land, reproduction cost of improvements and equipment, and a 5% return after taxes).

Though not prescribing a rate of return, the Commission has approved rate levels in a number of terminal lease or preferential assignment cases in the range of 7 and 8% on a rate base of current values of land and undepreciated original cost of improvements.

CURRENT CONSIDERATIONS AND CONCLUSIONS

All of the considerations that supported a rate of return at a higher level than those generally prevailing for public utilities at the time of the Edwards and Freas studies are present today. Very few of the factors that led to a low rate of return are present today, such as low interest rates, stable construction costs, capital availability, etc.

Since the early studies, a considerable evolution has occurred, characterized by the following major events:

1. Water carriers have introduced vast changes, not only in the configuration of vessels, but in related cargo handling methods.
2. Capital demands have been severely taxed, both by carriers and by ports.
3. As capital has continued to replace labor in the industry, the private terminal has either been forced out of business or has found more attractive uses for its capital.
4. Costs have continued to spiral.
5. Interest rates have also spiraled.

6. Increasing volumes of containerized cargo have led to steady declines of break bulk cargo (for which most California terminals were originally built).

7. The decline of break bulk cargo has seriously affected the revenues of ports dependent upon them, even to the point that they are hard-pressed to meet the minimum revenue requirements to support revenue bond issues.

8. Competition has become an ever-increasing problem, not only limited to California ports competing with each other and with Pacific Northwest ports, but with other regions as well.

With all of the dramatic changes in the physical characteristics of the industry, it is imperative that the financial considerations keep pace. By establishing market values of land, and depreciated reproduction costs as the rate base, some of the financial ills may be corrected. At least at the point of the rate structures, a basis of equality and uniformity will be provided.

The remaining part of the equation, then, is the rate of return. It must be sufficient to provide for the cost of presently required capital. This could be accomplished by using a weighted average of the interest requirements in this Association for outstanding bonded debt. Beyond this, a 2% rate of return should be adequate. The policy adopted by CAPA, in our opinion, is reasonable and will achieve generally consistent end results.

Policy Adopted by CAPA

The rate of return on the rate base adopted in the previous chapter will be the municipal bond index based on the first publication after January 1st for the year under study, plus 2½% rounded off to the nearest 1/10 of 1%.

This index, for the first week of January, 1974 (Bond Buyer's Index of 20 Municipal Bonds), was 5.18. Thus, the

rate of return for a study for the fiscal year ending June 30, 1974, would be 5.2% (rounding), plus 2.5%, or a total of 7.7%.

CHAPTER SIX—OVERHEAD EXPENSES

"Overhead expense" is a much-maligned and over-worked term. It has no real accounting significance unless it is appropriately classified and defined. In the marine terminal industry it is predominantly a fixed or constant cost, as distinct from a variable or incremental cost that fluctuates in relationship to volume. As a matter of fact, this is generally true for all of the costs of the industry; they are related to plant and equipment rather than to operating labor and expenses. Even at operating terminals capital costs are substantially greater than labor costs.

The following classifications and definitions of overhead are appropriate for the industry.

1. Plant overhead, including related equipment.

   Those costs necessary to hold, maintain and protect property devoted to public use. They would include the following:

   Maintenance
   Insurance
   Property taxes (or possessory interest)
   Watchmen (as related to fire protection)
   Dredging
   Waterway clean-up
   Terminal clean-up
   Fire boat expenses

2. Operating overhead

Operating overhead as a general term has a different meaning for the operating port than it does for the non-operating port. The operating port incurs considerable direct cost related to the labor and equipment necessary

to perform the many activities characterized broadly as Accessorial Services in this study. Beyond these direct costs the operating port incurs costs of an indirect nature in more or less comparable circumstances to the non-operating port.

With this prelude, operating overhead as a common concept for all ports can be defined as follows:

> Operating overhead includes those expenses incurred on terminal property which are not included in plant overhead, and which are not directly related to the labor and equipment involved in providing Accessorial Services.
>
> It would include the following:
>
> Superintendence (or wharfingers)
>
> Watchmen (to the extent that it relates to operating labor)
>
> Utilities (net of utility sales)
>
> Unclassified other expenses

3. Administrative overhead

This classification would include all expenses of the general office, including executive, sales, traffic, legal, accounting, communications, etc. It should also include depreciation on non-revenue structures and equipment that contribute to the marine terminal activities such as general offices, shops, automotive equipment and office furnishings and equipment.

The Freas Formula provided for a return on the investment in such items, as well as on working capital. The amount of return is not significant in relationship to total costs and would have no appreciable influence on the end results. In the interest of simplicity no provision is made for return on those items in the cost study.

APPORTIONMENT

Having defined the three categories of overhead, it becomes necessary to determine the amounts that are attributable to the marine terminal operations as a whole, and to further apportion them to the facilities and services included in the study.

Plant overhead presents no real problem as in most instances all ports record these items on a location basis. Where items are not so recorded, as in the case of insurance and taxes, they may be allocated conveniently on a value or area basis. Maintenance costs should include prorated expenses of the Maintenance Department, and to some extent the Engineering Department. It should be recognized that maintenance fluctuates considerably from year to year and that the incurred expense of any given year may reflect these fluctuations. Maintenance dredging, substructure and transit shed maintenance should thus be determined over at least a five year average and the actual costs adjusted to current indices.

Operating overhead generally is not recorded separately by location and must be apportioned on a reasonable basis. What is reasonable differs for the operating and the non-operating port. The operating port must recognize that operating overhead relates to Accessorial Services as well as to the charges for the use of facilities. There is no common, measurable basis of underlying cost to determine the precise amount to apportion to Accessorial Services. Each operating port should examine the overhead items involved and apportion in accordance with the best judgment of management and port policy. Port policy varies on watchmen hire, for example. Some ports hire watchmen solely for fire protection, in which event the cost would be a plant overhead. Others need additional watchmen to protect cargo from pilfering. In such circumstances a substantial amount should be charged to Accessorial Services. Non-

operating ports, and operating ports (after subtracting the amount apportioned to Accessorial Services) should allocate to separate facilities on a basis of the respective total investment in plant.

Administrative overhead need be measured in two broad steps:

1. By major profit center.
2. By locations within major profit center.

Public ports are engaged in widely divergent revenue-producing activities. They may include an airport, industrial development, concessions and rents, and other activities besides marine terminals. It is their responsibility to insure that each major revenue-producing activity bear a fair share of administrative overhead. No precise formula can be applied that will be equitable for all ports and all users, as the revenue-producing configuration has many variables among ports. It is a management responsibility of the individual port to adopt a method which is fair in the particular circumstances.

CHAPTER SEVEN—THE COST FORMULA

SCHEDULE I

Certain basic guidelines have been followed in developing the cost formula, as follows:

1. To develop a uniform method of measuring and allocating costs for all members for the common services of Dockage, Wharfage, Wharf Demurrage and Storage at facilities provided to the public on a published tariff basis.

2. To provide a flexible formula that will enable particular members to determine the costs of Special Facilities and the costs of Accessorial Services.

3. To adhere to the extent possible to cost allocation principles already established in the Freas For-

mula and approved by the Federal Maritime Commission.

4. To simplify procedures to the maximum extent, the goal being reasonableness of costs rather than precise scientific accuracy.

The formula consists of four basic schedules. They are illustrated in blank form in Appendix A. The four schedules are briefly described as follows:

Schedule I—Plant Costs

Schedule II—Wharfinger Costs and Allocations

Schedule III—Special Facilities

Schedule IV—Accessorial Services

Where a blank space appears in a particular column of these schedules, an amount should be entered; where there is a X, no amount will be entered.

Schedule I—Plant Costs is explained in the remainder of this chapter. Succeeding chapters explain Schedule II-IV. Schedule I is intended to be developed separately for each of the five classes of facilities which are included in this study. Additional Schedules I may be prepared as the need and interest are of importance to a particular member. This approach is a departure from the Freas method wherein all terminal facilities were included in one Schedule I. The new approach is preferable for the following reasons:

1. Much material that was reflected originally in supporting work sheets appears clearly in the formula itself.

2. Costs by major types of facilities are more apparent, thus being easily extracted for special analysis.

Columns (a) thru (c) are provided in the schedule to identify respectively the account title or description, its base of distribution, and the total cost to be distributed. Columns (d) thru (h) provide for the basic distribution

to vessel and to cargo, and various other uses. Space Rentals, Column (f) relates to offices, corrals, gear space, etc. which produce a rental revenue, the costs of which are included in the facility costs. Column (g) crane rental is provided to accumulate the costs of cranes that are an integral part of some general cargo facilities. Non-wharfinger, Column (h) provides for the accumulation of costs, which although a part of various terminal facilities, have no bearing on wharfinger operations.

The various bases of distribution are as follows:

Basis

1. 100% vessel

2. 100% cargo

3. 50-50 vessel and cargo

4. PRIMARY—cargo, space rentals, and non-wharfinger in square foot ratio

   SECONDARY—30% of the total cargo amount in primary distribution, represents aisle space. Allocate 40% of this to vessel. Remaining cost is for cargo.

5. 100% non-wharfinger

6. On basis of total structure costs (Line 18)

7. To crane rental equal to revenue therefrom—balance 50-50 vessel and cargo.

Account description in general

As noted previously, the preponderance of costs of a marine terminal operation relates to plant and equipment. In the absence of any similarity of account classification among members of the Association, account description for cost formula purposes is difficult. Cost study for rate-making purposes presents added dimensions due to the concept of return on investment as a "cost". The industry historically has adhered in the main to the principle of "fully

distributed costs" which simply means the inclusion and distribution of all costs providing the service including costs of operation, maintenance, and administration, as well as providing for a return on the investment through depreciation charges and a return on the investment, whether provided by debt or equity capital.

Schedule I of the cost formula thus becomes the most critical portion of this work. The accounts have been provided in sufficient detail to eliminate duplication in supporting workpapers and to facilitate the distribution process. For example, Return on Land is provided on nine lines, each item of which is in most cases allocated directly to the vessel or to the cargo, or 50-50 to each. The Freas Formula showed Return on Land on one line, requiring considerable supporting working papers for distribution purposes. Likewise the Freas Formula showed Return on Structures on one line, also requiring voluminous supporting working papers. Depreciation and maintenance of structures were shown on several descriptive lines in the Freas Formula.

The approach herein is to accumulate all structure costs including return, depreciation, maintenance, insurance and taxes by structural category as shown on Lines 10 to 17. This way five items of costs which are distributed on the same basis may be distributed as one. Appropriate work sheets are necessary to accumulate the five cost items, but this can be done with less effort than that exerted in previous formulae.

Lines 19 and 20 provide for costs of construction, maintenance and fire equipment, a procedure also employed in the Freas Formula. Under the concept of overhead expense described in the previous chapter, provision is also made in Lines 20 to 23 for plant related overhead of fireboat operation, watchmen for fire protection and clean up expenses. Crane costs is included as a new requirement not

prevalent during the Freas study. The equipment items on Lines 19-24 should include return on investment, depreciation and maintenance.

LAND AND WATERWAY VALUE AND RETURN

The total value of land is the product of multiplying the total surface land (between fender lines and rear and side boundaries of terminals) by a weighted average value per square foot. The amount attributable to the waterway is artificially derived. Although waterways are rarely owned by ports, the riparian rights to their use is the most compelling factor that makes the entire terminal lands valuable. Under the Freas approach, the normal area of waterway required to accommodate oceangoing vessels was an area 75′ wide extending the length of the berthing area. Today's ships require 100′ in the consensus opinion of Association members. For purposes of allocating Return on Land, the following hypothetical example is given:

Area of Land (other than waterway)	1,000,000 sq. ft.
Value per sq. ft. (weighted average)	$2.00
Total value	$2,000,000
Rate of return	8%
Amount of return	$160,000
Distributable area	
1,000,000 sq. ft. surface land	
100,000 sq. ft. waterway	
1,100,000 sq. ft. total	
Return per sq. ft.	$.14545

The area of each of the components of the terminal is multiplied by the return per square foot to determine the total return to be inserted on Lines 1 to 9 of Column (c). They are then distributed to Columns (d) thru (h) on the bases of distribution referred to by symbol in Column (b).

The test cost studies using a uniform 100′ width for waterway indicated that certain types of facilities may reflect a disproportionate ratio of waterway to surface land.

Bulk oil facilities (except super tanker terminals) are a good example. This problem should be re-considered in future studies. It would probably be more realistic to determine the waterway requirements for each type of facility, rather than using a 100′ width for all facilities.

It is unlikely, however, that this re-consideration would affect general cargo facilities. Thus, the conclusions of this study are valid insofar as they relate to a comparison of the FREAS and CAPA formulas.

COMMENTS ON THE BASES OF DISTRIBUTION

The bases were cited previously, but the following comments are made to explain them more fully. Basis I provides for the allocation of all waterway costs to the vessel. This is consistent with the Freas treatment and with the underlying principle of allocating cost in accordance with the use by vessel or cargo. The waterway is used solely by the vessel.

Basis 2 is used for those instances where a cost is for the sole benefit of the cargo. Rail tracks and roadways fall into this category. Their primary purpose is for ingress and egress of cargo via land carrier. A secondary use of roadways relates to auto passenger traffic by various personnel doing business at the terminal. This use is of such minor consequence as to be insignificant. The treatment adopted here is also consistent with Freas.

Basis 3 provides for a 50-50 allocation between vessel and cargo. It is used for distributing apron wharf at general cargo break bulk and combination terminals and for open wharf at bulk terminals and container terminals. This treatment departs somewhat from the Freas treatment for reasons of simplicity and also due to changed circumstances as follows:

1. **Apron wharf at break-bulk and combination break-bulk container terminals.** Apron wharf, for this

purpose, represents that portion of the wharf substructure comprising an area extending the entire length of the berth and between the fender line and the outward wall of the transit shed. Freas also allocated the apron wharf equally between vessel and cargo where there were no rail tracks on the apron. Most terminals at that time were equipped with rail tracks on the apron, as there were frequent cargo movements directly to and from the vessel and a flat or gondola rail car. He found that the cost of construction of aprons with rail tracks was 40% greater due to the tracks. In keeping with the principle that all rail tracks were for the sole benefit of the cargo, he thus allocated the rail portion of apron wharf costs directly to the cargo, and the remainder equally to vessel and cargo.

Direct movement today is so minimal that in most instances the rail tracks are obsolete. It would be manifestly unfair to burden the cargo alone with costs no longer devoted to its sole use. The equal distribution to vessel and cargo is an appropriate method of treating a joint cost where the precise benefit or use by either is impossible to measure.

2. **Open wharves at bulk and container facilities**

Open wharves are loosely defined as those which have no transit sheds or other covered structures for the accommodation of cargo. In the main they consist of bulk oil, dry bulk, container, lumber, and grain wharves. With the exception of grain, where in Docket 66-48 the Federal Maritime Commission approved the concept of the entire wharf being the responsibility of the vessel, the costs of the apron portion of such wharves are allocated on Basis 3, or equally to vessel and cargo.

Such wharves are clearly of benefit to both vessel and cargo. They are of benefit to the vessel in provid-

ing berthing facilities, support structures for flow of cargo to and from the vessel, ingress and egress of vessel personnel and various contractors, etc. They are of benefit to the cargo by their proximity to cargo storage areas (frequently owned by cargo interests), support structures for conveyance systems, etc. The precise degree of benefit to each is indeterminate, and it is reasonable to treat them equally.

The main problem herein is to define the open wharf investment, particularly where it is adjacent to a storage area. The definition problem varies by type of wharf. The following guidelines should be followed.

(a) Bulk liquid oil wharves—there is usually no problem, as such wharves are normally separate and distinct structures from the storage facilities.

(b) Bulk dry and lumber wharves—some of these are similar to bulk liquid wharves and are separate structures. Where they are not separate structures, they must be studied carefully to segregate the wharf use and the storage use. Engineering and operating personnel must be consulted to properly resolve these problems.

(c) Container wharves—considerable paved land areas are contiguous to the wharf at container terminals. The width of the tracts on which the cranes are constructed may be a reliable indicator, or in other areas the storage area is clearly marked and even striped for parking purposes. As a general rule, the area of wharf would be that area traversed by the cranes.

Basis 4 applies to the distribution of transit sheds and open cargo areas. These are the facilities devoted to the accommodation of intransit cargo on free time, and for Wharf Demurrage and Storage beyond free time. The Freas Formula provided that an allocation of these costs

be made first to Wharf Demurrage and Storage on a basis of the percentage of space required for such purposes. Unfortunately the ports do not maintain adequate records to support such calculations and, in the case of non-operating ports, do not have sufficient documentary records to do so. As a practical measure, though unreliable, they have estimated this usually by reference to relative revenues from Demurrage and Storage compared to Wharfage. These estimates have not been made other than on an annual basis which makes them even more unreliable.

Rate structures for Demurrage and Storage are provided in at least three dimensions for all ports, with a fourth dimension at operating ports. Rates are provided in cents per ton generally as follows:

Wharf Demurrage—daily rates for each day beyond free time

Wharf Storage —granted by the port authority only when requested

(a) Daily rates

(b) Monthly rates

Storage Receiving and Delivery—at operating terminals, when it is necessary to move the cargo to or from an intransit area and a storage area, an additional charge per ton.

The proper treatment of Demurrage and Storage was discussed in depth with the Economic and Finance Committee. It was agreed that such charges are generally in the nature of a penalty with the main objective being that of freeing cargo areas for intransit cargo. It was also agreed that it was impracticable to attempt to develop cost for the space use, and that cost was not of primary significance in establishing these rates.

Accordingly, the formula does not provide for a cost allocation of cargo areas to Demurrage and Storage. but de-

ducts their revenues from total cargo area costs. The remaining cargo area costs, after this deduction, are recoverable from Wharfage. At any period of cost study where Demurrage and Storage revenues exceed 20% of Wharfage revenues, the above treatment should be re-considered.

Although the Committee briefly discussed the Receiving and Delivery charges, no recommendation was made. This charge only applies at operating terminals and it is readily supported on a cost basis as the prime costs are labor and cargo handling equipment. Like other such activities, this is an Accessorial Service and should be treated as such in the cost formula as applied to operating terminals.

Continuing with Basis 4, transit sheds and open cargo areas are basically used for the accommodation of cargo (either on free time or on Demurrage or Storage), rental of specific areas and occasionally for non-wharfinger purposes (passenger facilities should be treated as non-wharfinger). A primary distribution should thus be made to these separate functions, on the basis of the percentage of total area used by each.

A secondary distribution should then be made of the cargo space costs. Cargo space requires aisles for ingress and egress, fire protection, etc. The Freas study found that aisle space represented generally 30% of total cargo space. Replies to questionnaires in this study indicate no need for departure from the 30% factor. The Freas Formula allocated 25% of aisle space to the vessel and 75% to the cargo. Modern conditions indicate a greater degree of use of the aisles by the vessel as the emphasis at marine terminals has been to speed the turn-around time of the vessels. We concur with the Committee that a more reasonable allocation of aisle space would be 40% to the vessel and 60% to the cargo.

Basis 6 is used for the distribution of miscellaneous equipment and services shown in Lines 19-22 of Schedule 1.

Basis 7 relates to cranes, another investment found at a number of recently constructed facilities, but not present during the Freas studies. These installations represent substantial investments by the port industry. They are of value to cargo particularly in hinterland areas, as in their absence considerable land carrier costs would be incurred to move cargo to metropolitan ports, where there is a wide choice of cargo handling equipment. They are of obvious value to the vessel as they contribute directly to the stevedoring operations.

It is unlikely that there will be sufficient use, however, to produce rental revenues to adequately compensate the port. After discussion with the Committee, it was agreed that the excess cost of crane installations over the rental derived therefrom was of equal benefit to the vessel and the cargo and should be so treated in the cost formula.

SCHEDULE IA—Cargo costs, combination break-bulk and container terminals

Schedule I is designed so that its entire contents can be transferred readily to Schedule II. This goal is achieved in all instances except that of the combination break-bulk and container terminal. Schedule IA is established for the purpose of distributing the plant costs between break-bulk and container cargo at such terminals.

Costs should be so allocated that the break-bulk and the container cargo are treated insofar as possible at combination facilities as they would be treated at separate facilities. On this principle we find that there are transit sheds and rail tracks at both break-bulk terminals and at combination terminals, but there are none at container terminals. These costs should thus be distributed directly to break-bulk.

All other apparent features of combination terminals are common to either break-bulk or container terminals, al-

though certain features may vary by degree. Open cargo areas may be separately laid out for containers and breakbulk, for example, in which case the costs may be directly segregated. In the absence of evidential support for direct allocations by use, a reasonable method for allocating the balance of costs of land and structures would be the revenue tons of Wharfage cargo.

CHAPTER EIGHT—THE COST FORMULA

SCHEDULE II

WHARFINGER COSTS AND ALLOCATIONS

Schedule II provides for the distribution of costs to the revenue producing classifications.

The first step is to bring forward the plant costs from Schedule I and Schedule IA. The first seven lines of Schedule II are used for this purpose. The total costs in Column (c) of Schedule I are inserted in Column (c) of Schedule II, a separate line in Schedule II being used for each of the various separate categories of Schedule I. The total cost brought forward, however, should be reduced by the nonwharfinger costs, Column (h) of Schedule I, as there is no need for further analysis of them.

No distribution bases are necessary for the plant costs in Schedule II, as all of the necessary analysis was done in Schedule I. The following process is all that is required.

1. Vessel cost, Column (d) Schedule I is posted to Dockage, Column (d) Schedule II. No breakdown of Dockage cost by vessel type is necessary, as Dockage rates are applied on the length of vessels without regard to type of cargo carried.

2. The cargo costs, Column (e) of Schedules I and IA, were separately developed by terminal classification. These are the costs to be assessed against Wharfage. Columns (e) through (i) of Schedule II are provided for this purpose.

For example, the cargo cost for break-bulk, Schedule I, Column (e) are transferred to Line 1, Column (e) of Schedule II. Cargo costs for Columns (e) and (f) for the combination break-bulk container terminals are found in Schedule IA and should be inserted on Line 2, of Schedule II, Columns (e) and (f).

3. Space rental costs, Column (f) of Schedule I, and crane rental costs, Column (g) of Schedule I, are posted to Columns (j) and (m), respectively, Schedule II.

Operating Expenses

Basis 8 is used for distributing certain operating expenses. Items on Lines 9 through 11 are common to all ports. They all require superintendence, utilities and more or less other terminal expenses not significant enough to classify separately. These items have some affect on all of the revenue producing activities and should be spread on as wide a basis as possible. Such a basis for non-operating terminals is the underlying plant costs, the totals of which appear on Line 8 of Schedule II.

For operating terminals, these overheads relate to labor activities as well as plant costs. A reasonable treatment would be to distribute 50% on the basis of plant costs and 50% on the basis of direct labor appearing on Line 12.

Expenses appearing on Lines 12 to 17 are incurred only at operating terminals and relate solely to Accessorial Services. They are accordingly distributed directly to Column (k), and will be discussed in more detail in Chapter X.

Administrative expenses

Basis 9 is used for distributing administrative expenses. At non-operating ports, they may be distributed reasonably on a basis of the sum of the underlying plant and operating costs. Every effort should be made, however, to

recognize special situations requiring more or less weight. For example, Special Facilities may represent mainly lease revenue rather than tariff revenue. Less detailed administrative and control processes are required for lease facilities.

The problem of allocating administrative expenses at operating ports is more complicated. Additional overhead expenses are incurred relating to the operational functions involving warehouse and clerk labor and operating equipment. The problem is to determine the amount of administrative expense related to revenues for use of terminal facilities on the one hand and the amount related to operations on the other hand. A review of Freas Formula studies for the 1966-1967 fiscal year provides a solution based upon experience. From those studies, we find the following average relationship of wharfinger administrative expenses to plant costs:

Operating ports	25%
Non-operating ports	18%

Thus the operating ports incur administrative expense of 7% of plant costs greater than non-operating ports. In the current study, it is recommended that 5% of plant costs (Line 8) be calculated and applied directly to Accessorial Services, Column (k). The remaining balance of administrative expense, being comparable in principle to that of the non-operating ports, may be allocated on the basis of plant costs, Line 8. The 7% was reduced to 5% for the above purpose as the plant costs used currently are at a higher level than those on which the 7% was based.

CHAPTER NINE—THE COST FORMULA

SCHEDULE III—SPECIAL FACILITIES

All ports have a wide range of special facilities. Such facilities may be considered "special" for a number of reasons, including the following:

1. Although it is a wharfinger facility being used as such, it does not fall within the five types of facilities of common interest to the Association.

2. Although it is a wharfinger facility, it is not being used as such, for example, a pier being rented as a ship supply or repair base.

3. It is a wharfinger facility provided to the public on other than a published tariff basis, such as straight lease, mini-max lease, preferential assignment, etc.

The responsibility assumed in this study does not embrace a cost formula to determine the compensatoriness of leased facilities on a common basis. It does require, however, that those ports desirous of measuring their costs at such facilities for their internal purposes have a convenient point of departure. It further requires that overhead costs of the entire port and the marine terminal department as a whole be fairly considered. Ideally those overheads determined in this study to be fairly allocable to Special Facilities should be considered equally fair when considering the revenue needs of those facilities.

Schedule III of the cost formula, therefore, commences by transferring the Special Facilities costs in Column (1) of Schedule II to Column (c) of Schedule III.

Further details of columnar distribution of Schedule III are not of common interest, nor are the solutions commonly possible. They require treatment on a local basis, but the distribution should follow the general principles established elsewhere in this study.

CHAPTER TEN—THE COST FORMULA

SCHEDULE IV—ACCESSORIAL SERVICES

This schedule applies only to the operating ports. The Accessorial Services shown in Column (k) of Schedule II are transferred to Column (c) of Schedule IV. Columns

should be provided in Schedule IV for as many of these services as are desired by the operating member concerned. A minimum columnar distribution would include the following:

Service charges

Rail car loading and unloading

Truck loading and unloading

Line handling

Miscellaneous charges (Man Hour Rates)

Storage receiving and delivering

Other services (detailed as necessary)

It should be observed at this point that Accessorial Services do not include any plant costs. This cannot be so when costs at operating ports for the basic charges of Dockage and Wharfage are to be uniformly developed. This in itself is not a departure from the Freas Formula, as very minor (other wharfinger) plant costs were allocated to Accessorial Services.

In rate-making, however, tariffs of operating ports may include rates called "Service and Facility Charges". These rates traditionally were based upon costs that included plant costs attributable to the vessel that were not recovered by Dockage rates. No need for revision of Service Charges downward is necessary, unless the Dockage revenues of operating ports increase to the point that the combined Dockage and Service Charge revenues significantly exceed the combined costs. An amendment of the tariff definition may be in order, however.

Operating ports frequently classify direct and indirect labor and other direct and indirect costs in considerable refinement. Whenever this practice is followed Schedule IV may be more meangingful if they substitute such refinements for the four lines used therefor in the schedule.

Direct labor, for example, may be refined into cargo handling labor and clerical labor. The objective is the ultimate distribution, and individual flexibility is preferable to rigid uniformity of terms.

Although no provision was made for operating equipment in Schedule I (because non-operating ports have none), some ports may have items of equipment that are actually a part of the plant, such as the car lifts at Sacramento. These items should have been included when developing costs for Schedule II, Line 17. Costs of operating equipment should include return on investment, depreciation, maintenance, etc. For this purpose, depreciated original costs as a rate base, and straight-line depreciation, should be reasonable and at least it is simple.

Every effort should be made to distribute costs of Schedule IV directly whenever possible. For example, other indirect labor may include clerical staff of the dock office, some of whom may be directly involved in the "car department", "demurrage department", etc.

Operating overhead generally may be distributed on a direct labor basis, and administrative expense on a basis of the total operating costs, Line 18.

CHAPTER ELEVEN

EVALUATION OF COST STUDIES, POLICY MATTERS AND CONCLUDING REMARKS

This chapter of the preliminary report was entitled "Evaluation of Results". It contained various recommendations and guidelines for cost studies to test the CAPA formula. The test studies have been completed and the chapter is re-written to include our evaluation of the cost studies along with comments on certain policies adopted by the Association and our general conclusions.

EVALUATION OF COST STUDIES

Chapter III identified seven members who participated in the cost studies. The studies were made for the fiscal year ended June 30, 1971, and included rate bases and rates of return as follows:

Rate Base	Rates of Return (%)
A. Land at current market value, improvements and equipment at depreciated historical cost	0-5-10
B. Land at current market value, improvements at depreciated reproduction cost, equipment at depreciated historical cost	0-5-10

We consulted in the conduct of these studies and reviewed the working papers to satisfy ourselves that the CAPA formula had been applied properly.

Freas Formula studies were made without our assistance for the same fiscal year. These studies were based upon Rate Base A above, and were limited to break-bulk facilities provided on a published tariff basis.

The cost studies support the following conclusions:

1. The CAPA cost formula, as compared to the Freas Formula, results in a 3% shift of the combined total Dockage and Wharfage cost from cargo to vessel at break-bulk facilities.

Basis for this conclusion:

Using the Freas Formula rate base (Rate Base A above), at a 5% rate of return, both the Freas and CAPA Formula were applied. The composite results for all of the members studied are as follows:

	Dockage Cost	Wharfage Cost	Total Dockage and Wharfage
CAPA Formula	$5,624,269	$14,686,293	$20,310,562
Freas Formula	4,956,352	15,189,707	20,146,059
CAPA Over (Under)	$ 667,917	$ (503,414)	$ 164,503

The figures demonstrate that the Dockage increase of $667,917 and the Wharfage decrease of $503,414 are ap-

proximately 3% of the total Dockage and Wharfage cost of \$20,146,059.

The difference of \$164,503 in the total costs of the two studies was caused by minor inconsistencies at certain ports in applying the Freas Formula. We reviewed the Freas studies sufficiently to identify and adjust for any significant inconsistencies. The difference is less than 1% of total costs and should not affect the conclusion stated above.

2. The use of the depreciated reproduction cost rate base for improvements (Rate Base B above) in lieu of the depreciated historical cost (Rate Base A above) increases total costs (including a 5% return on investment) by 31.3%.

Basis for this conclusion:

The composite total costs for the members included in the CAPA cost studies were as follows:

Rate Base B (Reproduction)	\$44,510,893
Rate Base A (Historical)	33,805,094
Excess of B over A	\$10,605,769
% Excess	31.3%

3. A rate of return of 5.5% on Rate Base B (including improvements at depreciated reproduction cost) provides the equivalent dollar amount as a rate of return of 10% on Rate Base A (including improvements at depreciated historical cost).

Basis for this conclusion:

The following composite amounts for members included in the CAPA cost studies show the total investment at Rate Bases A and B, and the returns on these investments at rates of 5% and 10%.

	Rate Base A (Historical Cost)	Rate Base B (Reproduction Cost)
Total Investment	\$254,159,240	\$464,094,695
Return at 5%	12,707,962	23,204,735
Return at 10%	25,415,924	46,409,470

The 10% return on the historical cost investment of $254,159,240 amounts to $25,415,924. The same dollar amount of $25,415,924, expressed as a percentage of the $464,094,695 reproduction cost investment produces a rate of return of 5.5%.

POLICY MATTERS

At the conclusion of the cost studies, certain matters requiring policy decisions of the Association were reported to the Economic and Finance Committee in our letter of February 1, 1974. These were considered by the Advisory Committee on March 7, 1974, and decided by the Association in its meeting on March 8, 1974. Certain of these decisions relate to matters covered in the preceding chapters and have accordingly been given full consideration as each matter arose, or at the conclusion of the chapter.

The following policies relate more to the ultimate use of the formula at it relates to the determination of revenue requirements, which subject is not specifically dealt with in the report (Policy citations below are from the CAPA minutes of March 8, 1974).

"That for the purpose of a composite study, that it include only those facilities that are charged to Dockage, Wharfage, Wharf Storage and Demurrage, which charges are assessed on a tariff basis."

The above statement of policy is meant to clarify portions of Chapter Three—Scope of Present Study. In that chapter it was observed that certain Association members are operating ports, also that certain members provide facilities on other than a published tariff basis. The CAPA Formula is designed to permit the development of costs for such activities *for the individual use of the member concerned.*

"That it be the policy of CAPA that it continue to combine the various types of cargo containerized and break-bulk

under one column rather than separate rate commodity columns."

This statement is concerned with how the cost study is used, rather than how it is compiled. The cost formula is actually constructed to allocate costs between vessel and cargo, as used by each at five distinct types of terminals. The policy clarification relates specifically to the traditional practice of the Association with respect to Wharfage on general cargo, where the revenue requirements are determined by comparing the revenues and costs of all general cargo facilities, and not by separate presentation by type of terminal or packaging.

"That the formula include the actual rate of return."

Chapter Eleven, Page 61 of the preliminary report included the following. "Some port managements are also interested in knowing their actual rate of return, as well as their relationship to standard. By reference to the supporting work sheets, the return on investment can be determined, as well as its distribution. These amounts may be deducted from costs to arrive at costs exclusive of return, or out-of-pocket costs plus depreciation. The difference between these costs and related revenues would represent gain or loss before return on investment (including interest). These gains and losses expressed as percentages of the investment itself would represent the actual percentage of return."

We believe the above treatment meets the requirements of the Association.

CONCLUSIONS

The CAPA Formula has been given deeper consideration by this Association than any of its predecessors. It reflects the combined experience of the members of the Economic and Finance Committee, which included accountants, engineers and traffic experts.

It observes the basic principles of cost allocation between vessel and cargo users that were established by its predecessors and approved by the Federal Maritime Commission.

The rate base philosophy is unchanged from traditional practices of the industry with respect to the investment in land and equipment. The base changes only with respect to the investment in land improvements. The need for this change equates simply to the demands of the economic environment and the uniformity of cost measurement that are vital to the financial stability of the port industry.

Lest the higher rate base create an uncontrollable inflation, a rate of return has been adopted by the Association that produces a dollar return nearly equivalent to a justifiable higher rate on a lower base. Other forces ultimately determine the level of rates to be charged by a port or an association of ports. The most prominent force is competition.

The CAPA Formula, its rate base and rate of return, for practical purposes, may result in a determination of revenue requirements on a maximum justifiable level. It is most unlikely, however, that such a level will ever be attained, even as under the Edwards and Freas philosophies the levels prescribed were never attained. The formula provides an enlightened approach to cost measurement, not a mandate that rates will be established with costs as the sole criteria.

Port rates are established ultimately in the discretion of port management. Where it is deemed desirable for the CAPA to have uniform rates, they are established only after a study of the revenues and costs and with forum discussions by the Traffic Committee and the Advisory Committee. All of the influences on rate-making are eventually considered before the final decisions are made.

We believe that the CAPA Formula provides a reliable basis for accumulating the cost data as the basic point of departure for the rate-making process.

SCHEDULE I—PLANT COSTS

a) General cargo, break-bulk
b) General cargo, container
c) General cargo, combination

d) Dry bulk
e) Liquid bulk
f) Special facilities

Line No.	Account Description (a)	Distribution Base (b)	Total Cost (c)	Distribution of Costs: Vessel (d)	Cargo (e)	Space Rentals (f)	Crane Rentals (g)	Non-Wharfinger (h)
	Return on land							
1	Waterway	1			x	x	x	x
2	Apron wharf (or open wharf at bulk and container facilities)	3				x	x	x
3	Transit shed	4					x	
4	Open transit area	4					x	
5	Rail tracks	2		x		x	x	
6	Roadways	2		x		x	x	
7	Other wharfinger	3				x	x	x
8	Non-wharfinger	5		x	x	x	x	
9	Sub-total							

Line No.	Account Description	Distribution Base	Total Cost	Distribution of Costs				
				Vessel	Cargo	Space Rentals	Crane Rentals	Non-Wharfinger
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
	Structures (return, depreciation, insurance, maintenance, taxes)							
10	Apron wharf (or open wharf at bulk facilities)	3				x	x	x
11	Transit shed—substructures	4					x	
12	Transit shed—superstructures	4					x	
13	Open transit areas	4					x	
14	Rail tracks	2		x		x	x	
15	Roadways	2		x		x	x	
16	Other wharfinger	3				x	x	x
17	Non-wharfinger	5		x	x	x	x	
18	Sub-total							
	% total							
	Miscellaneous equipment and services							
19	Construction and maintenance	6						x
20	Fire equipment and fireboats	6						x
21	Watchmen (fire protection)	6						x
22	Cleanup—terminals	6						x
23	Waterway costs (dredging, cleaning)	1			x	x	x	x
24	Crane costs	7				x		x
25	Total plant costs							

SCHEDULE IA—CARGO COSTS
COMBINATION BREAK-BULK AND CONTAINER

	Distribution Base (a)	Total Costs (b)	Break-bulk (c)	Containers (d)
Direct to break-bulk				
Transit shed—				
land				
structures				
Rail tracks—				
land				
structures				
Allocated on basis of revenue tons				
Land return balance				
Structures balance				
Sub-total				
% sub-total				
Remainder allocated on % above				
Total to Schedule II				

SCHEDULE II—WHARFINGER COSTS AND ALLOCATIONS

Line No.	Account Description (a)	Distribution Base (b)	Total Cost (c)	Distribution of Costs: Dockage (d)	Wharfage: Break-bulk (e)	Wharfage: Combination Container (f)	Wharfage: Container (g)	Wharfage: Dry Bulk (h)	Wharfage: Liquid Bulk (i)	Space Rentals (j)	Accessorial Services (k)	Special Facilities (l)	Crane Rentals (m)
	Plant costs (Schedule I)												
1	Break-bulk	Direct											
2	Combination container	Sch. IA				x	x	x	x		x	x	
3	Container	Direct						x	x		x	x	
4	Dry bulk	Direct			x	x		x	x		x	x	
5	Liquid bulk	Direct			x	x	x		x		x	x	
6	Space rentals	Direct			x	x	x	x			x	x	x
7	Special facilities	Direct		x	x	x	x	x	x		x	x	x
8	Sub-total			x	x	x	x	x	x	x	x		x
	Operating expenses												
9	Superintendence	8											
10	Utilities (net of sales)	8											x
11	Unclassified	8											x
12	Direct Labor	Col. (k)											x
13	Indirect labor	Col. (k)		x	x	x	x	x	x	x		x	x
14	Watchmen	Col. (k)		x	x	x	x	x	x	x		x	x
15	Other direct costs	Col. (k)		x	x	x	x	x	x	x		x	x
16	Other indirect costs	Col. (k)		x	x	x	x	x	x	x		x	x
17	Operating equipment	Col. (k)		x	x	x	x	x	x	x		x	x
18	Sub-total			x	x	x	x	x	x	x		x	x
19	Administrative expense	9											
20	Total costs												x

SCHEDULE III—SPECIAL FACILITIES

Line No.	Account Description (a)	Distribution Base (b)	Total Cost (c)	(Columns Reserved for Detail as Desirable)
	Plant costs (Schedule I)			
8	Special facilities			
	Operating Expenses			
9	Superintendence			
10	Utilities (net of sales)			
11	Unclassified			
18	Sub-total			
19	Administrative Expense			
20	Total costs			

SCHEDULE IV—ACCESSORIAL SERVICES

Line No.	Account Description (a)	Distribution Base (b)	Total Cost (c)	Service Charge (d)	Load and Unload: Cars (e)	Load and Unload: Trucks (f)	Line Handling (g)	Man Hour Charge (h)	Storage R & D (i)	Other Services (j)
	Operating expenses									
10	Superintendence									
11	Utilities (net of sales)									
12	Unclassified									
13	Direct labor									
14	Indirect labor									
15	Watchmen									
15	Other direct costs									
17	Other indirect costs									
18	Operating equipment									
19	Sub-total									
20	Administrative expense									
21	Total costs									